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Current Topics.

"Hansard."

THE recent effort of the Select Committee of the House of Commons to make "Hansard" "available for a wide public at a low price," however praiseworthy, is scarcely likely to be realised by any material increase in the number of its subscribers, most people being quite content with the admirable summaries provided by several of the morning journals. Although now a mere name, "Hansard" is still, however, popularly attributed to the official parliamentary reports, and the name carries the lawyer back in thought to the famous litigation in the early decades of last century, when Messrs. HANSARD, the then publishers of the proceedings of the two Houses of Parliament, issued a report which contained allegations against one STOCKDALE, who promptly brought an action against HANSARD claiming damages. In this suit Lord Chief Justice DENMAN ruled that "the fact that the House of Commons directed Messrs. HANSARD to publish all their parliamentary reports is no justification for them, or for any bookseller who publishes a parliamentary report, containing a libel against any man." This pronouncement by the Chief Justice made the House very angry, and it declared emphatically by resolution that the power of publishing their proceedings and reports was "an essential incident to the constitutional functions of Parliament," and it went on to declare that any person instituting a suit as to a matter of privilege contrary to the determination of either House would be guilty of a breach of privilege. Being a pertinacious person, STOCKDALE brought further actions in which the court unanimously ruled that the privilege and order of the House of Commons afforded no justification for the printers of "Hansard." Ultimately, the conflict between Parliament and the courts was resolved by the passing of the Act 3 & 4 Vict. c. 9, which provided that all such actions should be stayed on the production of a certificate or affidavit that the publication of which complaint was made had been issued by the order of either House of Parliament. Thus Parliament asserted its supremacy in this sphere of its activities.

Report of the Committee.

THE First Report of the Select Committee on the Publications and Debates Reports, 1939–40 (H.M. Stationery Office, price 6d. net), which contains an account of the proceedings of the committee, minutes of evidence, and an appendix by Commander STEPHEN KING-HALL on the use of "Hansard" for British information, advocates the taking of steps to increase the circulation of "Hansard" in its present form. That there is room for expansion is clear from the evidence which showed that existing sales at 6d. a copy are limited to some 1,300 subscribers, who take it for business reasons, and that the public at large is unaware that it can be bought or even, in many cases, that it exists. Moreover, while any public library can buy "Hansard" at half-price, only 128 avail themselves of the facility. The committee draws attention to the fact that a material increase in the sales would result in a decrease in the cost of production and urges that a wider knowledge of the activities of Parliament, as illustrated in official reports, would be of permanent value to the democratic system. It is thought that a greater demand might be stimulated through the medium of the British Broadcasting Corporation in connection with any announcements of items of parliamentary news, by judicious advertising, and by circulars to libraries, clubs, societies and educative institutions. On the other hand, the committee is not convinced that an abridged edition would be suitable for sale in any form which tended to discriminate between the proceedings of one day and another. Suggestions were made for the issue of a weekly edition of a selection of the official report of debates to consist of a brief introduction and complete report of one day's selected debate or, occasionally, two days' questions and answers, and that such weekly edition should be made available abroad for propaganda purposes and circulated at home at the price of 2d. a copy. The committee decided that the value of "Hansard" for foreign propaganda was a matter on which it must be guided largely by the view taken by the Ministry of Information. Evidence given on behalf of the Ministry showed that extracts from some of the principal speeches were already reprinted and circulated in various parts of the world, but that the proposal to make use of complete issues of

"Hansard" was not supported by any of the departments of the Ministry responsible for publicity in various parts of the world. As regards home consumption it will hardly be denied that the value of "Hansard" lies in its completeness.

The Solicitors (Emergency Provisions) Bill.

SEVERAL important amendments were introduced into the Solicitors (Emergency Provisions) Bill during the committee stage in the House of Lords on 7th March. The main provisions of the measure have already been described in these columns, and it will therefore be sufficient to indicate the character of the amendments without repeating in detail the original clauses. LORD WRIGHT moved the addition of a subsection to clause 2, providing that the clause, which confers power to allow earlier presentation for final examination, shall operate as from 1st February, 1940. LORD WRIGHT explained that the Bill had been delayed in its passage through the House, and that The Law Society was at that time holding an examination which, unless clause 2 became law, would be out of time and invalid. There were some fourteen candidates who were affected and who were attempting to pass their examination before going on national service; and, although a retrospective provision was not generally desirable, the learned lord thought it would be agreed that this was a proper case for retrospective legislation. The Lord Chancellor moved an amendment to leave out "and may pay such sum either free of income tax or after deduction therefrom of income tax at the rate for the time being in force" from clause 5, which confers power to suspend the award of prizes, medals and scholarships. The Bill proposed that the scholarships awarded should be paid free of tax, and the Lord Chancellor explained that in general that would be what would happen because the funds were exempt from income tax. But in other cases it would not happen, and it was undesirable in a Bill of the kind in question that an amendment of the law should be made as it were by a side-wind.

An Emergency Measure.

THE Lord Chancellor also moved a number of further amendments, the object of some of which was to make it clear that the Bill was a purely war emergency measure. These included the omission of clauses 7 and 9. The former proposed by the insertion of a new subsection in s. 37 of the Solicitors Act, 1932, to introduce changes in the application of fees in respect of the issue of practising certificates, while the latter proposed to transfer to the Registrar certain powers now vested under the Act of 1932 and the Solicitors Act, 1936, in the Master of the Rolls. The omission of such clauses from the Bill was proposed, in the Lord Chancellor's words, "with a view to its obtaining a second reading and going through all its stages in your lordships' House and in another place." Clause 8, which in its original form would have been permanent—substituting as it did for s. 26 (1) of the Solicitors Act, 1932, a provision empowering The Law Society to hold such examinations as the Council from time to time might decide—has been altered so as to confine its operation to the present emergency. A new clause confers power on the General Council of Solicitors in Scotland to permit at their discretion the whole or any part of a period of national service to be reckoned as actual service under an indenture of apprenticeship for the purposes of the Solicitors (Scotland) Act, 1933. The war emergency character of the measure is also reflected in a changed title which now reads: "An Act to make special provision on account of circumstances arising out of the present emergency as to examinations and service under articles in the case of persons desirous of being admitted as solicitors, as to the awarding of prizes, medals and scholarships by law societies, and as to the delegation of the powers of the Master of the Rolls under the enactments relating thereto; and for purposes connected with the matters aforesaid." In addition to the foregoing there were introduced several drafting amendments which need not be particularised.

Poor Persons' Appeals: A Practice Point.

The Times of 9th March records a decision of the Court of Appeal relating to the hearing of applications for leave to appeal from a judge's order and applications for leave to appeal as a poor person. The Court (SLESSER, LUXMOORE and GODDARD, L.JJ.) decided that, although it was the general practice of the court to deal in chambers with applications for leave to appeal as a poor person, where a plaintiff applied for leave to appeal as a poor person from the refusal of a judge to give leave to appeal from an order made by him refusing leave to proceed with an action under the Lunacy Act, 1890, the plaintiff having been admitted to apply to the judge as a poor person, it was more convenient, as a matter of practice, to hear both the application for leave to appeal from the judge's order and the application for leave to appeal as a poor person together in open court.

Recent Decisions.

IN *Imperial Smelting Corporation* v. *Joseph Constantine Steamship Line, Ltd.* (*The Times*, 2nd March), ATKINSON, J., negatived the charterers' claim for damages for non-performance of the charter-party by shipowners whose failure to perform the contract was due to a boiler explosion of an unprecedented character. The umpire found that the real cause of the accident had not been ascertained, and the learned judge intimated that it was impossible to suppose that the shipowners would have agreed to a term depriving them of the right to rely on frustration unless they could show affirmatively that it could not by any possibility have been due to their negligence.

In *Tibber* v. *Upcott* (*The Times*, 5th March) the Court of Appeal (SLESSER, LUXMOORE and GODDARD, L.JJ.) upheld the decision of a county court judge to the effect that the plaintiff's flat had ceased to be decontrolled by reason of failure to register the premises as such within the time provided by s. 2 (2) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933.

In *Bond* v. *Nottingham Corporation* (*The Times*, 7th March) the Court of Appeal (Sir WILFRID GREENE, M.R., and MACKINNON and CLAUSON, L.JJ.) upheld a decision of SIMONDS, J. ([1939] 1 Ch. 847), to the effect that a local authority was not entitled under s. 26 of the Housing Act, 1936, to demolish a house comprised in a clearance order without providing equivalent support for an adjoining house outside the area, the owner of the latter having an easement of support from the house to be demolished.

In *The Lapwing* (*The Times*, 9th March) HODSON, J., held that where a yacht in the hands of servants of a company for cleaning and painting had been negligently docked and damaged in consequence the owner had established a loss due to a peril *ejusdem generis* with a peril of the sea, namely, stranding, and was therefore entitled to recover under a marine insurance policy. It was held further that the plaintiff was covered by cl. 5 of the Institute Yacht Clauses relating to negligence by the master, this term including every person (except a pilot) having command or charge of a ship (Merchant Shipping Act, 1894, s. 742).

In *Hughes* (*Inspector of Taxes*) v. *B. G. Utting and Co., Ltd.* (*The Times*, 13th March), the House of Lords upheld a decision of the Court of Appeal (83 SOL. J. 237) to the effect that where a company, carrying on the business of builders, contractors and developers of building estates, disposed of houses by way of ninety-nine-year leases in consideration of a cash payment and subject to yearly ground rents, the ground rents should, in view of the fact that the company retained the reversionary interests, be brought into the company's accounts for income tax purposes at cost or market value, whichever was the less. *John Emery and Sons* v. *Inland Revenue Commissioners* [1937] A.C. 91, where the builders had disposed of the whole of their interest in return for cash and certain rent charges, distinguished.

Criminal Law and Practice.

AIDING AND ABETTING AN ACQUITTED PERSON.

ANY persons aiding, abetting, counselling or procuring the commission of an offence punishable on summary conviction are liable to be proceeded against and convicted either together with the principal offenders or before or after their conviction (s. 5, Summary Jurisdiction Act, 1848). In the case of misdemeanours generally, s. 8 of the Accessories and Abettors Act, 1861, provides that aiders and abettors of misdemeanours are liable to be tried, indicted and punished as principal offenders.

There is ample and well-respected authority for the proposition that to solicit a person to commit a crime, whether it be a felony or misdemeanour, is an indictable misdemeanour even though no offence is actually committed. In *R.* v. *Higgins*, 2 East 5, the defendant was convicted of soliciting another to steal. In fact the alleged principal was never convicted of the theft, and on a writ of error Lord Kenyon, C.J., said: "But it is argued that a mere intent to commit evil is not indictable without an act done; but is there not an act done when it is charged that the defendant solicited another to commit a felony?" See also *R.* v. *Quail*, 4 F. & F. 1076, and *R.* v. *Bentley* [1923] 1 K.B. 403.

The question whether on the acquittal of the principal offender a person, charged with aiding and abetting, can nevertheless be convicted, was considered in *Morris* v. *Tolman* [1923] 1 K.B. 166, in relation to the offence under s. 8 (3) of the Roads Act, 1920, of using a vehicle for some other purpose than that for which the vehicle was solely licensed. The subsection provided that the person so using the vehicle was liable to an excise penalty if the rate of duty in respect of the purpose for which he used the vehicle was higher than that for which he held the licence.

The owner of the vehicle in question held the licence and the respondent was his driver. The vehicle was licensed for commercial use only, but the driver was alleged to have taken passengers in it. The justices dismissed the case against the licence holder on the ground of insufficient evidence, and held that as no offence had been proved against the alleged principal, they could not convict the alleged accessory. Lord Hewart, C.J., said, with regard to this opinion: "If that was intended to be a general opinion it cannot be supported. It does not in the least follow because a principal is acquitted that another person may not be convicted for aiding and abetting. There are obviously cases where such a conviction is possible." The court held, however, on the language of the subsection, that its effect was limited to licence holders and for that reason the respondent could not be convicted. Avory, J., held, furthermore, that "in order to convict it would be necessary to show that the respondent was aiding the principal, but a person cannot aid another in doing something which that other has not done."

The same reasoning was recently applied by the divisional court in *Thornton* v. *Mitchell* (1940), 56 T.L.R. 296, in which a motor omnibus driver had been acquitted of charges under s. 12 (1) of the Road Traffic Act, 1930, of driving without due care and attention and driving without reasonable consideration for other persons using the road. The conductor, however, had been convicted under s. 5 of the Summary Jurisdiction Act, 1848 (above), of aiding and abetting the offences alleged against the driver.

It appeared that after the disembarkation of all the passengers from the omnibus at a road junction, the conductor looked out of the back to see if the road was clear. He then gave the signal to the driver to reverse. This consisted of ringing the bell three times from the back of the omnibus. It was about 7.45 p.m. and visibility was not good. The conductor jumped off the omnibus and it was slowly reversed, but in the course of the reversing process two persons who had just disembarked were knocked down and one of them received fatal injuries. Owing to the steps and the height of the back window it was impossible for the driver to see what was at the back of the car and he had to rely entirely on the conductor's signal.

The court held that the case was *a fortiori* upon *Morris* v. *Tolman*, *supra*, and quoted the passage cited above from the judgment of Avory, J. With regard to the finding of the justices, Lord Hewart, C.J., said: "In one breath they say that the principal did nothing which he should not have done and in the next breath they hold that the bus conductor aided and abetted the driver in doing something which had not been done or in not doing something which he ought to have done." The appeal was allowed.

Although one person cannot aid another in doing something which in fact is not done, nevertheless it does not follow in every case, as Lord Hewart, C.J., pointed out in *Morris* v. *Tolman*, *supra*, that where a principal is acquitted, another may not be convicted of aiding and abetting. As long ago as 1703, in Reg. Wallis, 1 Salk. 334, where A was acquitted of the murder of a constable in a case in which forty persons had set upon a number of constables, it was held that E could be convicted of aiding and abetting A, for, as Holt, C.J., said: "The indictment and trial of this prisoner is well enough, for who actually did the murder is not material; the matter is, that a murder was committed, and the other is but a circumstance, and all are principals in this case. That was, of course, a case of felony, in which the law is clear, but in 1877, in the Court of Criminal Appeal, Blackburn, J., said: "Is there such a person as an accessory in point of law in a misdemeanour?" Both Sumners and Burton were principals in this charge and properly indicted as such. Burton had been committed on a charge of aiding and abetting Sumners to obtain money by false pretences, and Sumners on a charge of obtaining money by false pretences. They were both, however, jointly indicted as principals, and Sumners was acquitted and Burton was found guilty and his appeal failed (13 Cox 71).

Where a misdemeanour therefore has been committed B may be convicted of aiding and abetting A, even though A is acquitted, but clearly there can be no aiding and abetting of something which has not happened.

NEW TRIAL ON ANNULMENT OF CONVICTION.

THE Court of Criminal Appeal recently held a trial to be a nullity, allowed the appeal, annulled the conviction, and directed that the appellant should appear at borough quarter sessions to answer the indictment against him (*R.* v. *Cronin*, *The Times*, 27th February, 1940).

The facts were that the appellant had been found guilty on a charge of dangerous driving, sentenced to nine months' imprisonment and disqualified for five years from holding a driving licence by a court presided over by a person purporting to act as deputy recorder. The recorder had been unable to sit, having been detained by severe weather, and had appointed as his deputy a chairman of county quarter sessions, who was not and never had been a barrister. He was accordingly ineligible for appointment as a recorder's deputy, as s. 166 (1) of the Municipal Corporations Act, 1882, provides: "The recorder may, in case of sickness or unavoidable absence, appoint, by writing signed by him, a barrister of five years' standing to act as deputy recorder at the quarter sessions then next ensuing or then being held, and not longer or otherwise." The court is constituted under s. 165 as a court of record, with the recorder as sole judge.

It is interesting to observe that the court followed the House of Lords case of *R.* v. *Crane* [1921] 2 A.C. 299, where it was held that the Court of Criminal Appeal had power, where it decided that the proceedings which were the subject of an appeal were a nullity, to order the appellant to be tried according to the law. The ground of this decision was, in the words of Lord Atkinson, at p. 329: "In my view the Court of Crown Cases Reserved had jurisdiction and authority

where a mis-trial occurred to annul and set aside the verdict found and judgment entered up upon it, and as a necessary result demanded in the interests of justice, to direct that the accused be tried on the indictment found against him." His lordship added that s. 20 (4) of the Criminal Appeal Act, 1907, vested that jurisdiction in the Court of Criminal Appeal, and there was nothing in that Act to take away or diminish in any way that jurisdiction or authority. Obviously in such a case the accused could not plead *autrefois convict*, as there had not been a valid previous trial or conviction.

Submission of "No Case."

THE Court of Appeal have once more stated their view on the proper course to be adopted in a court of first instance, where there is a submission of no case, in a non-jury action. The previous occasion in which the matter was considered was *Alexander* v. *Rayson* [1936] 1 K.B. 169, a case which, the reader will remember, was concerned with an apparent attempt to defraud the rating authorities of Westminster by the use of a lease and an agreement for services, the last-named document being withheld from the authority.

The practice point arose in *Alexander* v. *Rayson* in this way. The plaintiff was the landlord and the defendant the tenant of an expensive flat in Westminster. The lease, which was at a rent of £450 a year, provided for certain services to be rendered by the plaintiff. The agreement which required quarterly payments from the defendant, amounting to £750 per year, provided for substantially the same services as the lease with, in addition, the provision of a frigidaire. The plaintiff took the lease to the rating authority and obtained a substantial reduction in his assessment, which stood until the authority came to hear of the agreement, when they increased the assessment.

In the meantime the defendant, having a grievance about the services, refused to pay her quarterly payment on the second agreement, but tendered the rent under the lease, which was refused, hence the action. This duly came on before du Parcq, J., as he then was, sitting without a jury.

The defendant in answer to the claim pleaded: (*a*) that there was no consideration for the second agreement, (*b*) that the plaintiff had not performed his obligations and thereby repudiated both the agreement and the lease, (*c*) tender, and subsequently she amended by leave, and pleaded (*d*) that the agreement was void for illegality, as its execution had been obtained by the plaintiff to defraud the rating authority. She also counter-claimed.

At the hearing, the facts of the lease and agreement not being in dispute, the defendant had to establish her pleas and her counsel opened and called evidence, directed to the pleas of want of consideration and of illegality. At the close of this evidence the plaintiff's counsel submitted that, assuming the evidence were accepted, it afforded no answer to the plaintiff's claim. This submission, after argument, was upheld, du Parcq, J., deciding that the evidence of illegality, if accepted, afforded no answer, and also, no doubt principally on the construction of the lease and agreement, that there was consideration for the latter.

At this stage, it being open to the plaintiff to call evidence on the claim and to both parties to call evidence on the counter-claim, the matter was still an interlocutory one, and the defendant had to ask for leave to appeal, which she asked and obtained. The Court of Appeal, consisting of Greer, Romer and Scott, L.JJ., were with difficulty persuaded to hear the appeal at all in the then condition of the action, but did so at the request of both parties.

On the merits the Court of Appeal held, in agreement with du Parcq., J., that there was consideration for the agreement, but, in disagreement with the learned judge, that the illegality was an answer. The case was then sent back for the hearing to be continued.

The judgment of the court was delivered by Scott, L.J., who in the course of it said ([1936] 1 K.B., p. 178):—

"At the conclusion of the defendant's evidence the plaintiff's counsel submitted that there was no case to answer upon the two issues which at that stage had alone been presented to the court, that is to say, the issues of no consideration and of illegality. Where an action is being heard by a jury it is, of course, quite usual and often very convenient at the end of the case of the plaintiff or of the party having the onus of proof, as the defendant had here, for the opposing party to ask for the ruling of the judge whether there is any case to go to the jury, who are the only judges of fact. It also seems to be not unusual in the King's Bench to ask for a similar ruling in actions tried by a judge alone. We think, however, that this is highly inconvenient. For the judge in all cases is also the judge of fact, and we cannot think it right that the judge of fact should be asked to express any opinion upon the evidence until the evidence is completed. Certainly no one would ever dream of asking a jury at the end of a plaintiff's case to say what verdict they would be prepared to give if the defendant called no evidence, and we fail to see why a judge should be asked such a question in cases where he and not a jury is the judge that has to determine the facts. In such cases we venture to think that the responsibility for not calling rebutting evidence should be upon the other party's counsel and upon no one else.

"This, however, is by the way; for no one can suggest that, when the defendant's case upon the two issues had been concluded, she did not establish a *prima facie* case as to the facts on the second issue. Nor, of course, did the plaintiff's counsel make any such suggestion. What he did ask the learned judge to rule was that, accepting the evidence given on the defendant's behalf, there was no case to answer in law. We cannot help regarding this as not only an irregular but a most inconvenient procedure."

The form the procedure took in *Alexander* v. *Rayson* was certainly peculiar, and the view of the court on the question of the submission of no case by a defendant, where a plaintiff has called evidence, was *obiter*, for there the position was that the plaintiff was, in effect, demurring to a plea of the defendants. It is not, therefore, altogether surprising that the case did not make the radical alteration in the procedure in courts of first instance, either county courts or courts of the King's Bench Division, that might have been expected. Thus, in a commercial case of *Muller* v. *Ebb Vale* (1936), 52 T.L.R. 655, the plaintiffs claimed damages for repudiation of a contract and the defendants denied repudiation in fact and relied on an exception clause in the contract. At the close of the plaintiff's case the defendant submitted no case to answer, and Branson, J., upheld the submission, and refused to put the defendant on terms that he would call no further evidence, which he might have wished to do on the issue of the exception clause in the contract. The learned judge held that nothing in *Alexander* v. *Rayson*, which depended on its peculiar circumstances, prevented the matter from being within his discretion, guided only by consideration of the saving of expense to the parties.

On 7th January last, in the Court of Appeal, Goddard, L.J., is reported in *The Times* newspaper of 8th January as having said that in actions for negligence, where the judge was asked to rule that there was no case for the defendant to answer, it was desirable that he should adopt the practice which had been always followed by Mathew, J., and Horridge, J., and say to the defendant, "Do you elect to call no evidence?" Then, if the defendant was content to leave the case as it was, the judge should rule. Otherwise he should refuse to rule no case. That old practice was a sound practice, because it prevented a defendant who appealed to the Court of Appeal from asking for a new trial on the ground that his evidence had not been before the court.

This does not conflict with the decision of Branson, J., as the case before him was one of an action in contract. At the same time, it is difficult to reconcile that decision with *Alexander* v. *Rayson*, which was an action in contract. In cases of procedure, not covered by the rules, the judges of first instance are not fettered strictly by the views of the Court of Appeal, and accordingly the guidance of the Court of Appeal, in the recent case, may not be followed, but as it confirms the view in *Alexander* v. *Rayson* it is likely that the practice will now conform to it.

Company Law and Practice.

Sending out of Proxies by Directors.

In *Peel* v. *London & North Western Rly. Co.* [1907] 1 Ch. 5, a controversy had been going on for some years between the directors of the company and a body of shareholders with reference to questions of policy affecting the management of the company. Prior to a general meeting of the company the directors sent to each shareholder a circular setting out the facts and the views of the directors, and asking for the support of the shareholders at the meeting; and there was enclosed a stamped proxy paper containing the names of three of the directors as proxies, with a stamped cover for return. The expenses of printing, posting and stamping these documents were paid for out of the funds of the company. Some of the shareholders brought an action against the company and the directors to restrain the using of the company's funds in the payment of such expenses. It was held by the Court of Appeal that it was the duty of the directors to inform the shareholders of the facts, of their policy and of the reasons why they considered that this policy should be maintained and supported by the shareholders; that they were justified in trying to influence and secure votes for this purpose, and accordingly that expenses which had been *bona fide* incurred in the interests of the company were properly payable out of its funds.

The company in that case was a statutory company; subject to the provisions of the Companies Clauses Act, 1845; but the decision has always been regarded as applicable to companies incorporated under the Companies Acts, subject, of course, to any express provisions contained in the company's constitution which are applicable. The questions involved were, broadly speaking, two in number: first, the question of principle, ought the directors to seek to influence the votes of the shareholders? Secondly, the question of detail rather than of principle, whether the expenses of the proxy papers, stamps and postage ought to be paid by the company? As regards the first question, Vaughan Williams, L.J., pointed out that the question was not whether the directors had a right to seek to influence the shareholders, but whether they had a duty so to do. "Is it to be said that the board of directors of a company, whether a railway company or other company, who have had to adopt a particular policy, when that policy is impeached by others (be the number of those who impeach big or small), have not the positive duty to inform the shareholders what have been the reasons for the policy which has been theretofore adopted, and why they think that that policy should be maintained in the future? I cannot myself understand anyone having a doubt as to the directors having that duty. They are not to abstain from their duty to give such information to the shareholders of the company as they think may be desirable for them in the interests of the company because of the accident that a certain number of shareholders take the view that the policy theretofore exercised by the directors has been a wrong policy. It is their duty to give information of the facts which they think justify the policy. It is their duty to put forward to the company those reasons which they think justify the policy which the company with their assistance as managers has adopted, and to say to the company, if they think in good faith that it is the best advice: 'Do not attend to these people who are circularising you to set aside the policy of the company up to this date, but on the contrary trust us and leave it to us.' If they may do that, may they not go a step further and say: 'If you do trust us, if you do believe the policy which we have adopted is the proper policy, we advise you of this, that the best way of getting that policy continued is to appoint as your proxies the gentlemen we have mentioned in these proxy papers'? I myself cannot understand why the directors should not have that duty which I have spoken of."

As regards the second question, that of the payment of the expenses of stamping the proxies, etc., it followed that the directors having such a duty of informing and advising the shareholders, the expenses could be fairly held to be incidental to and consequential upon the duties of the directors; it was legitimate for the company to defray out of its assets the reasonable expense of doing all such things as were reasonably necessary for calling the meeting and obtaining the best expression of the shareholders' views on the questions to be brought before them.

It must be borne in mind that the propositions established by *Peel's Case* hold good only if the directors are *bona fide* acting in the interests of the company, and Buckley, L.J., uttered a word of warning against regarding the decision as any authority for justifying the action of directors who seek to influence the shareholders and who spend the company's money for that purpose, when seeking in reality to advance their own interests, e.g., to procure their own re-election or the adoption of a policy which is in their rather than the company's interests.

The principles laid down in *Peel's Case* were applied by the Privy Council in *Campbell* v. *Australian Mutual Provident Society*, 99 L.T. 3, where it was held that directors *bona fide* believing that an extension of the company's business would be advantageous were entitled to use the funds of the company for the purpose of circulating their recommendations among shareholders and of issuing proxy forms; and it was further held that they were under no obligation to circulate the arguments of dissentient shareholders against their proposals.

The question of directors sending out proxies arose in the recent case of *Wilson* v. *London Midland & Scottish Rly.* [1940] 1 Ch. 169, on appeal 56 T.L.R. 436, where the circumstances were somewhat special. It was the practice of the company to send out before the annual general meeting to all stockholders holding not less than £2,500 nominal amount of stock stamped proxy forms made out in the directors' names with stamped and addressed envelopes for their return. The object of this was to secure the quorum of votes representing in nominal value £1,000,000 stock which was required under the company's constitution. This procedure was attacked by a stockholder who alleged that it involved a contravention of certain sections of the Companies Clauses Act, 1845, and was unfair to the smaller shareholders. Simonds, J., held that there was no infringement of any statutory provision, for the Act neither imposed an obligation to send out proxy forms to all the stockholders nor prohibited the sending out of proxy forms to some stockholders and not others. As regards general principles, if it could be proved that the purpose of selecting certain stockholders was to obtain support from those who were considered likely to support the policy of the directors and to abstain from sending proxy forms to those who it was anticipated would not support the directors' policy, it would be open to challenge. But there was no improper motive which was or could be attributed to the board; and it was established that the explanation of the course adopted was to ensure that the necessary quorum should be obtained and that the sending of proxies to every stockholder would involve substantial additional expense. The procedure adopted was accordingly one which the directors were entitled to adopt. This decision was affirmed by the Court of Appeal, the Master of the Rolls saying that

there was no legal foundation for the principle contended for, viz., that if stamped proxies were issued to some of the stockholders they should be issued to all.

In this case again the company was not a company incorporated under the Companies Acts, but I think the principle of the decision would apply to companies so incorporated unless their articles of association contained express regulations on the point. As in *Peel's Case*, the test appears to be whether the directors are acting *bona fide* in what they honestly and reasonably believe to be in the interests of the company; if they were acting for their own purposes very different considerations would apply.

Finally, it may be remembered that in *Re Dorman Long and Co., Ltd.* [1934] Ch. 635, Maugham, J., as he then was, held that directors who, pursuant to an order of the court under s. 153 of the Companies Act, 1929, get proxies for or against a scheme of arrangement, are bound to use them. If directors, acting properly, choose to obtain proxies for any purpose it is apprehended that, equally, they would be bound to use them.

A Conveyancer's Diary.

Some Cases on Boundaries.

In most cases nothing turns on the exact positions of the boundaries of land which is conveyed. The boundaries are generally obvious. Sometimes, however, a doubt does arise and then the position is usually very difficult. Where the issue is as to the ownership of a strip of land a few feet only in extent the plan very seldom throws any light because it is on too small a scale. The same is true of the definition of land conveyed by quantity. Such quantities are often not entirely accurate, are only reliable to the nearest one or two perches; moreover, the area is usually described as X acres "or thereabouts," while a plan is as often as not "by way of identification only and not of limitation."

Therefore, when a question of this sort arises, resort must be had to general principles, which are often exceedingly difficult to apply. Accordingly, any case regarding them must be of general interest. It is for this reason that *Fisher* v. *Winch* [1939] 1 K.B. 666 is important.

In that case the trustees of one Saillard were selling off their testator's estate in 1922. On the 30th October in that year they conveyed to the predecessor in title of Winch a certain piece of land described by area and by reference to the ordnance survey map. The plan was not for identification only. On the following day they conveyed to the predecessor in title of the plaintiff a piece of land adjoining the defendant's land, on its west side. This piece of land was also described by area and by a reference to the ordnance survey map. There was a plan on the conveyance, but it was for identification only, unlike that on the defendant's root of title. Now, it was fairly clear that the boundary between the plaintiff's land and the defendant's land lay along the line which divided the two closes on the ordnance survey map, wherever that might be, since both closes were defined by reference to that map. The actual physical state of affairs along the boundary was that there was a bank of earth surmounted by a hedge on one portion and by a fence on the other portion, and that on the west side of it (that is, on the side nearest to the land undoubtedly vested in the plaintiff) there was a ditch. There was evidence that the predecessor in title of the defendant, who had been a tenant of the defendant's land before she purchased it, had caused her brother, in the days when she was a tenant, to take mud out of the ditch and put it on her marrow beds. This piece of evidence was held to be admissible on the point of ownership, but not to be conclusive in itself, and to be even less convincing because it did not follow that a purchaser who was tenant was necessarily purchasing everything of which she was tenant.

In 1936 the defendant, claiming ownership of the ditch and of some ground even further to the west, entered and put up a fence enclosing that to which he laid claim. The action, of course, arose out of that transaction and was one for damages for trespass.

The learned judge at the Lewes Assizes dismissed the action, relying on the well-known presumption that, in the absence of other evidence, the boundary between two closes divided by a ditch and a bank lies along the edge of the ditch furthest from the bank. This presumption is, of course, justified by imagining that, in days long ago, the owner of one close went to the extreme edge of his land and there dug a ditch, throwing up the soil on his own land so as not to commit trespass. But in holding that the presumption was applicable to the present case the learned judge overlooked the point that it is only a presumption. Through out the proceedings at the Assizes this presumption was talked of as if it was a custom, which would have been an entirely different thing. It is, however, a presumption, and being a presumption is only relevant in the absence of other evidence. In the present case, as the Court of Appeal pointed out, there was quite clear evidence which negatived the presumption. So far from the hedge and the ditch having got there because one of two adjacent owners dug them, there was undisputed evidence that before 1922 the two closes had been in the same ownership. On the basis that the rule about hedges and ditches was a custom, an experienced local solicitor was called to prove the custom. This evidence was held by the Court of Appeal to be entirely inadmissible. But the evidence which was admissible was that of an official of the local ordnance survey office, who stated that the ordnance survey authorities draw the boundaries between closes for the purposes of their maps along the *medium filum* of hedges and fences, and that the acreage of closes for the purpose of the ordnance survey is calculated on that basis. That being so, the case was clear, since the defendant and the plaintiff both had titles defined by reference to the ordnance survey map. Accordingly, the boundary between them was held to be along the centre of the hedge and of the fence, with the consequence that the plaintiff had committed trespass and was liable in damages.

The case, therefore, clearly establishes certain propositions: (1) the rule regarding hedges and ditches is a presumption and not a custom; (2) being a presumption, it cannot stand against positive evidence; (3) the presumption is necessarily negatived in cases where the definition of the parcels is by reference to the ordnance survey map; (4) the presumption is necessarily negatived by evidence of recent common ownership.

An *obiter dictum* of MacKinnon, L.J., drew attention to another rather interesting point, which is that in some parts of the country there is a current superstition that the owner of a hedge is also the owner of a space, sometimes said to be 4 feet wide, outside it. He added that the superstition is entirely without foundation. I confess it is one of which I had never heard.

Another rather interesting small point arose in the case of *Wallington* v. *Townsend* [1939] Ch. 588. Mrs. Townsend was the owner of two bungalows known as Seaspray East and Seaspray West. She had bought Seaspray East in 1922 and Seaspray West in 1929. Having got the two of them, she threw them into one, and so maintained them about three years. After that she divided them into two again, but rather differently, because the bathroom, half the lavatory, the coal-box and part of the drains of Seaspray West were on and under part of the ground which originally had been included in Seaspray East. In 1937 she contracted to sell to Mrs. Wallington "all that piece of land . . . together with the bungalow called Seaspray East and the garage now standing thereon . . . as the same is more particularly delineated on the plan annexed hereto and thereon coloured

pink." The plan, unfortunately, was the plan which had been on the original conveyance of Seaspray East, and accordingly Mrs. Townsend was in the unhappy position of having contracted to sell to Mrs. Wallington her own bathroom and half her lavatory. She refused to carry out her contract. An action was brought against her for the return of the deposit and damages for her failure to complete. She counter-claimed for rectification, or alternatively for a declaration that the contract did not include the land which had caused the trouble. The learned judge was against the defendant on the main issue and on both points in the counter-claim. It therefore became necessary to assess the damages. It was argued for the defendant that the plaintiff was not entitled to any damages, or was only entitled to damages to be measured by the difference between the value of the property at the date fixed for completion and the price which she would have paid for it under the contract, i.e., that she was only entitled to damages for loss of bargain, a trivial sum in this case. Morton, J., pointed out that if these submissions were correct, a vendor who fails to complete owing to a defect of title would be in a worse position than a vendor who, having a perfectly good title, merely refused to complete. Such a result would be startling and would be a direct encouragement to vendors who repent of their bargains to break their contracts. In the event, the learned judge held that, if a purchaser in this position was able to prove damage by loss of bargain, he would be able to recover that, but not to recover his conveyancing costs. But where he is unable to prove damage by loss of bargain he would recover his conveyancing costs, in addition, of course, to the return of the deposit and 4 per cent. per annum interest upon it. The learned judge gave judgment accordingly. It would be very interesting to know what the court would have done if the purchaser had not considerately brought an action for damages. If she had brought an action for specific performance a very difficult situation would have arisen.

Finally, there is the somewhat surprising case of *Butler and McCarthy* v. *Standard Telephones and Cables, Ltd.* [1940] W.N. 26. In that case the defendants were owners and occupiers of a strip of land leading from a public highway to their sports ground. The two plaintiffs were owners of villas facing one another across the strip. The defendants had planted some Lombardy poplars along the strip, which had grown exceedingly well, with the result that their roots had spread in all directions and had undermined the houses of the plaintiffs, causing them to subside. Lewis, J., gave judgment for the plaintiffs, the action being one for nuisance, trespass and wrongful interference with the natural right of support. The curious thing about the case was that the damages were agreed subject to the determination of the issue of liability. I confess that I had thought that liability in such a case would be clear, if for no other reason, then under the rule in *Rylands* v. *Fletcher*. But it seems that there was no previous English authority regarding damage caused by the roots of a tree. There was, however, an Irish case, *Middleton* v. *Humphries*, 47 Ir. L.T. 160, where it was decided that the burrowing of roots under a wall could ground an action. The learned judge did not, however, merely rely on that case but said that there seems to be no distinction in law or fact between damage caused by overhanging branches or by burrowing roots. For the future, therefore, owners of trees will allow their roots to escape from their ground at their peril. It will also follow that, since escaping roots amount to a nuisance, the nuisance will be subject to the ordinary liability to be abated without action, and the owner of the adjacent land will be able to cut the roots at the boundary.

Landlord and Tenant Notebook.

The Fires Prevention (Metropolis) Act, 1774, s. 83.

THE Fires Prevention (Metropolis) Act, 1774, passed more than a century after the Great Fire and the rejection of Sir Christopher Wren's town planning scheme, has been largely replaced and superseded by London Building Acts and Metropolitan Fire Brigade Acts. Only s. 83 and s. 86 remain unrepealed; the latter contains the statutory qualification of liability for fire, the former gives parties interested a right to have insurance money due under a policy taken out by other parties laid out in rebuilding. Not very much is heard of the section nowadays, but it played a part, albeit a minor part, in the recent case of *Portavon Cinema Co., Ltd.* v. *Price* (1940), 84 SOL. J. 152.

Difficulty has been experienced in ascertaining the scope and meaning of the provision and the remedies applicable. The relevant operative words are " that it shall and may be lawful to and for the respective governors or directors of the several insurance offices for insuring houses or other buildings against loss by fire, and they are hereby authorised and required upon the request of any person or persons interested in or entitled unto any house or houses, or other buildings, which may hereafter be burnt down . . . or damaged by fire, or upon any grounds of suspicion that the owner or owners, occupier or occupiers, or other person or persons who shall have insured . . . have been guilty of fraud, or of wilfully setting their house or houses, etc., on fire, *to cause* the insurance money to be laid out or expended . . . towards rebuilding, reinstating or repairing such house . . . ; unless the party or parties claiming such insurance money shall, within sixty days next after his, etc., claim is adjusted, give a sufficient security to the governors or directors, etc., that the same insurance money shall be laid out and expended as aforesaid, or unless . . ." and the rest provides for friendly arrangements between contending parties.

One question which has never been satisfactorily settled is whether this enactment applies to the Metropolis only or not. The statute had a wordy heading in which it was described as " An Act for the further and better Regulation of Buildings and Party Walls, and for the more effectually preventing Mischiefs by Fire within the Cities of London and Westminster and the Liberties thereof, and other the Parishes Precincts and Places within the Weekly Bills of Mortality, the Parishes of Saint Mary-le-bon, Paddington, etc." But when in *Ex parte Goreley, Re Barker* (1864), 4 De G.J. & S. 477, Westbury, L.C., heard an appeal from a decision concerning premises at Dover, his lordship pointed out that s. 83 had a special preamble: "And in order to deter and hinder ill-minded persons from wilfully setting their house or houses, or other buildings, on fire with a view of gaining to themselves the insurance money, whereby the lives and fortunes of many families may be lost or endangered," and, reasoning that remedies must correspond to evils, held that the section applied. There is, indeed, no reason to suppose that the Legislature considered provincial landlords less ill-minded and less likely to fire their houses regardless of the welfare of occupying tenants than were property owners in London, though it might be suggested that the method of building then followed in the Metropolis, which the statute as a whole sought to regulate and improve from the viewpoint of safety, gave London landlords more opportunity and thus greater temptation and rendered additional deterrents desirable. But Lord Westbury's judgment was disapproved in *obiter dicta* in the speeches of Lords Selborne and Watson in *Westminster Fire Office* v. *Glasgow Provident Investment Society* (1888), 13 A.C. 699. So in the result the position is not very clear.

It will be observed that the statute obliges the insurers to " cause " the moneys to be " laid out or expended . . . towards rebuilding reinstating or repairing " the premises

unless the claimant gives security that the money shall be laid out or expended as aforesaid or some agreement is reached. I take it that the three expressions "rebuilding, reinstating or repairing," visualise different degrees of damage by fire and, possibly, the two expressions "laid out and expended," visualise different degrees of "cover." But what the statute does not provide for is any deviation from the old plan. In the eighteenth century, no doubt, taste was more settled and improvements a rare thing in the building business; but nowadays, as was shown by *Wimbledon Park Golf Club* v. *Imperial Insurance Co.* (1902), 18 T.L.R. 815, it is possible not only that landlord and tenant should agree that the money should be for building better premises than those destroyed (in that case, a golf club pavilion), but that they should at the same time disagree about the premises to be built. The dispute in that case came before the court in this way: the insurance company availed themselves of the first of the conditions resolutive which conclude the section, but their idea of "sufficient security" was a simple undertaking by their assured, the landlord. The tenants thereupon sought a mandamus, but it was held that the application was misconceived, as an injunction to restrain the insurers from parting with the insurance money otherwise than, etc., would meet the requirements.

In *Sun Insurance Office* v. *Galinsky* [1914] 2 K.B. 545 (C.A.), it was the insurance company which invoked the wrong remedy. The demised premises concerned were insured in the joint names of landlord and tenant (and also a mortgagee of the lease, who, however, took no part in the proceedings). The premises having been burned down, landlord and tenant negotiated with one another about rebuilding, but came to no agreement. The tenant thereupon set about the work himself with the assistance of a builder and invited the insurers to sanction this procedure. Instead, they took out an interpleader summons. This was held to be inappropriate; there were not two claimants; the tenant had never claimed by words or by conduct, but had merely sought to defeat the statute!

In both the above cases the question was mooted how an insurance company were to be expected to perform their statutory duty if the conditions under which they might be absolved did not obtain. In the former, Wright, J., said he thought they had no power to enter upon the land; in the latter, Vaughan Williams and Buckley, L.JJ., left the point alone, but Kennedy, L.J., certainly gave some strong arguments against the opinion expressed by Wright, J.: "If . . . the Legislature has required the company to rebuild, the question will require consideration whether either the landlord or the lessee can prevent an order being made by the court to enable the company to perform their statutory duty."

In *Portavon Cinema, Ltd.* v. *Price* the plaintiffs were tenants and the dispute was mainly due to the circumstance that while they had insured with Lloyd's, the first defendant being one of the underwriters, the landlords (under the terms of a mortgage of their interest) had taken out a policy with a company who were the second defendants. A question of double insurance then arose; and one argument advanced was that, by virtue of the section under discussion, the landlords being "persons interested in or entitled upon" the building, were insured with Lloyd's. Branson, J., said that a right to call upon insurers to lay out money on a building they had insured did not make those vested with that right assured persons.

This case, too, left a point commented upon but not decided, namely, whether Lloyd's underwriters came within the scope of the section at all. As regards the intention, it may well be said that they do; but one appreciates the difficulty of establishing that they are "governors or directors" of an insurance office, and, presumably for this reason the learned judge, while not deciding the point, expressed the opinion that the section did not apply to Lloyd's.

Our County Court Letter.

QUALITY OF MOTOR CYCLE.

In *Davis* v. *Watson*, recently heard at Worcester County Court, the claim was for the return of £5, being the deposit paid on a motor-cycle. The plaintiff's case was that he agreed to buy a second-hand machine for £14 1s., and paid a deposit of £5. The balance was payable by instalments, but, after two days' trial, the plaintiff returned the cycle, as it sounded like a tractor, and was so slow that the plaintiff's seven-year-old son could run faster. The machine was represented as being three years old, but its probable age was ten or twelve years, and the top gear would not engage. The defendant's case was that the reason for refusing the plaintiff a trial trip on the machine was that it had trade plates. On returning the cycle the plaintiff made no complaint, but merely said that he had taken a council house, and might be required to leave if the authorities discovered that he owned a motor-cycle. The machine was in good condition, and had since been re-sold, without complaint from the new owner. The reason for withholding the log-book from the plaintiff was that he had asked the defendant to license the machine, and the log-book was retained for that purpose. His Honour Deputy Judge H. A. Tucker held that it was an implied term of the contract that the goods should be reasonably fit. As the cycle was not fit for the required purpose, judgment was given for the plaintiff, with costs.

FUNCTIONAL INCAPACITY.

In *Robinson* v. *Renishaw Iron Co., Ltd.*, at Chesterfield County Court, the applicant had sustained a fracture of the pelvis in October, 1937. Compensation had been paid at the full rate (30s.), but the applicant had recently been certified as fit for light work, and his compensation had accordingly been reduced. Nevertheless, the applicant was still having hospital treatment three times a week, and he could not walk without a stick. Sensation in the right leg was lost below the knee, and his personal applications for work had been unsuccessful. The case for the applicant was that he was still totally incapacitated, and his full compensation should be restored. The respondents' medical evidence was that the applicant's gait and stick were unnecessary. Such trappings of invalidism prejudiced his chances of getting work. The applicant was not a malingerer, but his ailments were functional, i.e., there was no organic basis for the symptoms. The applicant was fit for light work of a general nature, and his compensation had been rightly reduced in accordance with his partial incapacity. His Honour Judge Longson held that the applicant's inability to get work was due to his incapacity, as there was little suitable work in the district for a man so situated. An award was therefore made as asked, with costs.

INSANITY AS AN ACCIDENT.

In *Jones* v. *Dinorwic Quarries*, at Caernarvon County Court, the applicant's late husband had fallen down the face of the rock on the 15th June, 1939. He thereafter suffered from sleeplessness and depression, and committed suicide on the 28th June. The applicant's case was that the deceased became a changed man after the accident, which was the cause of his suicide while insane. The respondents' case was that there was no connection between the accident and the insanity, the latter alone being the cause of the suicide. His Honour Judge Sir Artemus Jones, K.C., held that some physiological disturbance to the material of the brain must have been caused, which brought about the sudden and entire change in the deceased's physical condition and mental outlook. The chain of causation was complete, and the insanity was the direct consequence of the injuries sustained in an accident arising out of and in the course of the employment. An award was therefore made in favour of the applicant, with costs. See *Dixon* v. *Sutton Heath Colliery Co., Ltd.* (*No.* 2) (1930), 23 B.W.C.C. 135.

To-day and Yesterday.

LEGAL CALENDAR.

11 MARCH.—The *Ruxton Case* will be long recalled by those who delight in the gruesome. The trial at Manchester Assizes of the jealous, passionate young Indian doctor who had killed and cut up his wife and the nursemaid of his children in his home at Lancaster, and thrown their dismembered remains into a ravine near Moffat, was full of horrors. But for scientists there was also the fascination of the brilliant work of the medical experts in their reconstruction of the bodies. The trial reached its climax on the 11th March, 1936, when the prisoner went into the witness-box. He did not save himself from the gallows.

12 MARCH.—Horrible in a different way was the trial of Sidney Fox, which began at Lewes Assizes, on the 12th March, 1930, lasting over a week.

13 MARCH.—The 13th March, 1845, found in the dock at the Aylesbury Assizes, a remarkable figure dressed in the garb of a Quaker. John Tawell was being tried for the murder of Sarah Hart. It is true that he had been expelled from the Society of Friends some time before, but he had continued deeply respected for his piety and wealth. However, the fact that he built schools and established savings banks did not prevent him from resorting to prussic acid to rid himself of a woman to whom he had to pay an allowance. The ingenious but unsuccessful defence put forward by his counsel, afterwards Chief Baron Kelly, that she had poisoned herself through eating apple-pips earned that gentleman a nickname which he never lost.

14 MARCH.—On the 14th March, 1752, John Swan and Elizabeth Jeffryes were sentenced to death at Chelmsford Assizes for the murder of the girl's uncle at Walthamstow. While the judge was making a moving and pathetic speech she fainted several times. When at last she recovered she begged for as long a time as possible to prepare for a future state. She had lived in her uncle's house, and Swan, the gardener, had been her lover. To get his money they had conspired to kill him, and after he had been shot dead in his bed one night, they had arranged things so that it looked as if there had been a burglary.

15 MARCH.—After Charles I had ordered Sir Edward Herbert, his Attorney-General, to exhibit articles of impeachment against the Five Members and had been obeyed, the Commons turned the tables on him and impeached the Attorney-General. Though he pleaded the King's command, the proceedings went on and on the 15th March, 1642, the House of Lords resolved that he was guilty. They were probably overawed by the threatening attitude of the Lower House, but they showed their own estimate of the charges by refusing to inflict any punishment on him.

16 MARCH.—On the 16th March, 1713, Richard Noble, a young attorney, was sentenced to death at the Kingston Assizes. He had formed an attachment for the wife of one of his clients and had taken her to live with him. Not content with this, he had harassed the husband with Chancery suits over his wife's separate estate. At last the unfortunate client hit back, obtaining a warrant for the arrest of his fugitive lady as having left him to live "in a loose, dishonourable manner." When, however, he arrived at Noble's house with two constables his enemy immediately drew his sword and ran him through the heart.

17 MARCH.—On the 17th March, 1663, Pepys wrote: "To St. Margaret's Hill in Southwark where the Judge of the Admiralty come and the rest of the Doctors of the Civil Law and some other Commissioners, whose Commission of Oyer and Terminer was read and then the charge given by Dr. Exton which methought was somewhat dull though he would seem to intend it to be very rhetorical, saying that Justice had two wings one of which spread itself over the land and the other over the water which was this Admiralty Court."

THE WEEK'S PERSONALITY.

The story of Sidney Fox is a veritable rake's progress of the most sordid description. His first experiment in fraud was made at the age of twelve when he collected for a charity and gummed two leaves of his account book together to hide a deficit. Later as page boy in the London house of an elderly knight he became such a pet with his employers from his charming looks and manners that he was called "the cherub." The servants, however, knew him as a sneak and when he succeeded in defrauding an elderly housemaid of all her savings by making overtures to her he had to go. This exploit must have been painful to him for he was sexually perverted and proud of it. With an intimate knowledge of his employer's family and a talent for imitating the ways of the wealthy he was able later to make a small sum passing himself off as a grandson of the old gentleman. A pose as an officer and a member of the R.A.C. led him to prison. Forging, cheating, in and out of gaol, he led a life in every way scandalous. At last he came to spend a good deal of his time travelling about hotels with his old mother who adored him and co-operated with him in defrauding them. Thus they lived till one day, her life having been insured, he staged an accident and she was found dead in a burning bedroom. For this he was hanged.

NO CERTAIN BLISS.

"Was your marriage happy at the start?" counsel recently asked a witness in the Divorce Court, and Mr. Justice Bucknill said: "We cannot assume that marriage is a state to which the word 'happy' can properly be applied. It is enough if a spouse can say of it that it was even normal. 'Was your marriage normal?' is a much more sensible question." Constant dealing with matrimonial causes seems to make judges chary of talking too lightly of happiness. One recalls the case of an eloquent advocate who wound up a speech before Mr. Justice Cresswell with the words: "I hope your lordship will decree a separation between these parties and let this lady pass the rest of her days in peace and happiness." But the judge said: "This court has no power to decree that this lady shall pass the rest of her days in peace and happiness, but what it has power to decree is that these persons shall be judicially separated." On the whole, both in marriage and separation, it is probably wise to leave out "lived happily ever after."

JUDGES' MANNERISMS.

Of late the glamour value of Bench and Bar has caused more traders than usual to drag them into advertisements for the stimulation of sales. One of these, designed to sell a species of chocolate bean, said to be good for the nerves, told (with comic illustrations) the story of a barrister who was put off his speech by an eminent judge's habit of tapping absent-mindedly on his desk, but who cured his lordship with a timely gift of a packet of the wonderful beans. Well, that, at any rate, was a better way of dealing with the situation than the one adopted by an Irish barrister who, irritated by the mannerisms of Crampton, J., interrupted his argument before the full court, saying: "I really can't proceed while Judge Crampton is nodding his head at me and the smack of his lips every five minutes is like the uncorking of a bottle." The old judge, who was a most polished gentleman, did not fly into a rage at this rudeness, but said: "I am really not aware of these peculiarities and I am grateful for the rebuke. No man is conscious of his own pecularities."

Practice Notes.

LEAVE TO PROCEED: LEAVE TO APPEAL.

In *Re Arthur James Griffith's Application* (1940), 56 T.L.R. 370, 371, Morton, J., granted leave to appeal against his order. He had given leave that a purchaser who had failed to complete a contract for the purchase of land should forfeit his deposit. Leave to appeal, the learned judge said, was necessary; "since it did not finally decide the rights of the parties," the order was interlocutory.

See Supreme Court of Judicature Act, 1925, s. 31 (1) (i) ("Yearly Practice," *op. cit.*, p. 1845).

For the distinction between a "final" and "interlocutory" order, see the notes to Ord. LVIII, r. 15, *op. cit.*, pp. 1288–1291, and the definition there cited from Lord Alverstone, C.J., in *Bozson* v. *Altringham Urban District Council* [1903] 1 K.B. 547:—

> "Does the judgment or order as made finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order. If it does not, it is then, in my opinion, an interlocutory order" (at pp. 548, 549).

By r. 18 of the Courts (Emergency Powers) Rules, 1939, the court may suspend, discharge or vary an order relating to leave to proceed, if, in the circumstances, that course is just. Either party may apply by summons (*op. cit.*, p. 1631, *ad loc.*).

SPECIAL ORDER AS TO COSTS.

The Court of Appeal does not look favourably upon a premature submission by the defendant, at the end of the evidence for the plaintiff, that there is no case. It would appear probable—certainly in "running-down" cases, which are again prevalent—that *all* the evidence should first be heard before the submission is made. The reason is clear: if all the evidence is heard, an appeal may often be avoided; if there is an appeal, the Court of Appeal will have seisin of all the facts.

The plaintiff had just stepped off a tramcar on the Thames Embankment; she was struck while crossing the roadway. The real question was whether or not she was on a "pedestrian crossing" within the meaning of the term in *Bailey* v. *Geddes* [1938] 1 K.B. 156; or whether, though on the crossing, she was the cause of her own injuries, within *Chisholm* v. *London Passenger Transport Board* [1939] 1 K.B. 426. After the cross-examination of the plaintiff, a submission was made on behalf of the defendant; no witnesses were called and the judge straightway gave judgment for the defendant. He failed to decide the point to be determined in cases involving pedestrian crossings; a new trial was ordered.

The court, however, holding that but for the premature submission a new trial could have been avoided, made a special order as to costs; if the plaintiff should succeed in the new trial, she should have the costs of the first trial; in any event, the defendant, however, was not to have the costs of the first trial (*Sims* v. *James Grose, Ltd.* (1940), 56 T.L.R. 377).

In *Halliwell* v. *Venables* [1930] 99 L.J.K.B. 353, the Court of Appeal made the order followed in the present case. In that case, they thought that the action ought not to have been withdrawn from the jury, because an explanation by the driver of the reason why his car ran on to the pavement should have been given under the rule of *res ipsa loquitur* laid down by Erle, C.J., in *Scott* v. *London & St. Katherine Docks Co.* (1865), 3 H. & C. 596. Scrutton, L.J., said:—

> "There has been too much lately of this trying to run cases on no evidence to go to the jury. It is very much better for the parties in the matter of expense that the verdict of the jury should be taken in such a case coupled with the submission that there is no evidence to go to the jury, because then you save the expense to the parties of a second trial" (at p. 355 of 99 L.J.K.B.).

Correspondence.

[The views expressed by our correspondents are not necessarily those of The Solicitors' Journal.*]*

Solicitors' Defalcations.

Sir,—*The Times* of the 24th February contained a brief account of a meeting of The Law Society (which, though a member, I was unable to attend), at which certain proposals put forward by the Council were approved. *The Times* account did not state, however (though it is the fact), that the Council made it clear in their Report that their proposals (which have the effect of doubling the already heavy burdens borne by solicitors) would not come into operation till after the War. In view of the many young men who have abandoned their practices in the country's cause and the many more older men whose practices, to use the President's own words, have diminished "to the vanishing point" such postponement is obviously not only fair but necessary.

In passing, it should be noted that these proposals, affecting more than 16,700 solicitors, were passed at a meeting comprising only the odd 700, and they were not unanimous. The first proposal is that all solicitors' accounts shall be professionally "examined" (but not "audited") once a year, at a cost, no doubt, of at least £5 5s. The object is to prevent fraud. Auditing, however, does not prevent fraud, and it is pretty clear that a solicitor clever enough to swindle a client will be equally capable of hoodwinking an accountant.

The number of "crooks" in the profession is admittedly negligible, and the cause of defalcations is that a man, finding himself in a tight corner, falls to the temptation of temporarily using a client's money, with the intention of recouping it later. In the future, even if the money has been restored, it is true that his action may be discovered and exposed, but not till after it has taken place. Thus more cases of backsliding may come to light, but none will be prevented. No doubt the proposal looks well on paper, but that is all.

The second proposal is to set up an insurance fund out of which victims will be compensated. The premium is to be a sum "not exceeding £5," but the Council's Report seems to indicate that the words "not exceeding" are only inserted as a lure, and that the intention is to impose a "poll tax" of £5. Clearly such a premium should, to be fair, be graduated according to the amount of clients' money passing through a solicitor's hands, but this is not suggested.

Then there is another lure, a suggestion that it may be possible to persuade the Government to remit a small part of the wholly unjustifiable duty (another "poll tax") imposed on solicitors although they enjoy no greater privileges than the members of other professions who are not so taxed. This suggestion is not, as it should be, made an integral part of the main proposal so that they stand or fall together, but is kept separate, no doubt because the Council know that their plea for the remission of taxation is most unlikely to succeed and will be quietly dropped.

The avowed object of the proposal is to restore public confidence in the profession. But has it ever been lost? If, say, some financial house fails and brings down many reputable companies, firms and individuals in its fall, other similar houses may very naturally feel the shock and get the idea that the public will lose confidence in such concerns. But in truth the public is not so foolish or unfair as to judge a whole profession by the criminal acts of an individual. So it is with us; we feel the shock, and to some extent the stigma, but there is no need for us to get into a panic. Nothing has been more conducive to public alarm than the antics of The Law Society for the last few years, proposing measure after measure, all calculated to throw dust in the eyes of the public and all greatly exaggerating the evil. Why then are such proposals made? Because they look well on paper; though likely to be almost entirely ineffective they sound well: in fact they are eyewash.

If the Society really believes that public uneasiness exists—which is doubtful—and wishes to allay it, it has only to publish the true facts. In a letter to the Press it could point out that the publicity given to every case of default, however small, was largely due to the high repute of the profession, so that even a single case of fraud was noteworthy; that this publicity gives an entirely false impression of the truth; that less than 0.001 of the profession is involved; that, if the average amount of clients' money handled by each solicitor in the course of a year is put at the very modest figure of £3,000, the total so handled amounts to £50,000,000 per annum; that the total defalcations (giving the average annual figure over a period of say ten years) is almost negligible in comparison; that the total number of victims compared with the number of clients served (which must exceed a million) is similarly insignificant; that one failure such as Hatry's involves more money and more victims than all the defalcations of all the solicitors in perhaps twenty years. Such figures could be amplified and would soon show the public how they had been deceived. But men and women will continue to go to the man who has proved himself their best friend for guidance and help, and they smile at the frantic efforts of The Law Society to represent every solicitor as at least a potential rogue who cannot be trusted unless he gives security.

Finally, there is the proposal to force every solicitor into the Society. Nearly every solicitor already belongs to his local society, because it gives him value for money. If the Provincial Societies were affiliated to the main body and the Council were composed of delegates appointed by all (the smaller ones being grouped for the purpose of election) we should not only get a democratic constitution, but very nearly all practising solicitors would be in membership.

But if the Society wants to attract rather than to dragoon the small practitioner, let it demand the immediate and complete abolition of the present unjustifiable annual tax. Of course it will meet with refusal; let the Society's rejoinder to the Government then be: "Very well; continue to collect your £200,000, but let it be on three conditions: (1) that it is spread over all professions alike; (2) that it is graduated; and (3) that it is collected over the whole country equally; on these conditions the Treasury will not lose a penny and the tax will be paid without complaint." Why should the little man in two shabby rooms in Bethnal Green, whose clients are of the very poor, pay the same tax as his wealthy brother of Lincoln's Inn? And more still, why should he pay half as much again as the plutocrat of Birmingham or Manchester? Does Birmingham pay a lower income tax than London? Anyone with a sense of fairness must see that this discrepancy between London and the rest of the country is unjust, but the Council of The Law Society is specifically asking the Government to widen it rather than to close it.

Well even the most anxious of us need not worry till the War is over, and what conditions will then prevail no one can tell. It may be that with income tax at 10s. or 15s. in the £ all will agree that to place further heavy burdens upon our harassed profession will be quite out of the question, and we shall hear no more of proposals which, however well they may look on paper, may cause much distress and seem incapable of effecting any good.

LONDON SOLICITOR.

Reviews.

The Solicitors' Handbook of War Legislation. First Supplement. By S. M. KRUSIN, B.A., and P. H. THOROLD ROGERS, B.A., B.C.L., Barristers-at-Law. 1940. Demy 8vo. pp. xv and (with Index) 143. London: The Solicitors' Law Stationery Society, Ltd.; Stevens & Sons, Ltd.; Sweet and Maxwell, Ltd. Price 7s. 6d. net.

A review of this excellent handbook appeared in THE SOLICITORS' JOURNAL for 13th January (*ante*, p. 23). The supplement is altogether worthy of the principal work. It includes all the relevant legislation up to and including Statutory Rules and Orders published on 7th February, 1940. The new regulations under the Trading with the Enemy Act, the first Order under the Prices of Goods Act, the regulations dealing with Price Regulation Committees, the Compensation (Defence) General Tribunal Rules, 1939, and the new Lighting Order are among the important measures examined in the book. References to the principal work are throughout printed in heavy type and reference to the Supplement discloses at once, what alterations, if any, have been made to the law as set out in the principal work. In addition to the admirable preliminary note and annotations the work contains an analysis of the further decisions under the Courts (Emergency Powers) Act, 1939, since the publication of the principal work. Both authors and publishers are to be congratulated on the incalculable service they have rendered to the profession.

The Rainbow in the Valley. By The Rt. Hon. JAMES CREED MEREDITH, Judge of the Supreme Court of Eire, 1939. Demy 8vo. pp. viii and (with Index) 258. Dublin: Browne & Nolan, Ltd. 6s. net.

On recognising in the author of this book a well-known Irish judge, one might take the title to indicate a collection of reminiscences, but it is nothing of the kind. It is a Martian fantasy. A group of scientists working in a remote valley in China succeed in establishing communication with the inhabitants of Mars, who are very like ourselves, but have reached a higher stage of development. The result is talk. If you like Irish conversation which ranges over every conceivable topic and stops at and for nothing, you will enjoy this book immensely. The discussions with the Martians and among their discoverers touch on Hegel's Doctrine of the Absolute, La Rochefoucauld on Hypocrisy, the Messiah, Gordon Richards, Stalin, de Valera, Survival after Death, Telepathy, the Treaty of Versailles and almost everything else in time, space or infinity. This book is clearly not for people who are only interested in monstrosities on their inter-planetary trips. But those who enjoy being set off on new trains of thought should like it.

Modern Factory Lighting, including Special Wartime Requirements. 1940. Demy 8vo. pp. viii and 139. Issued jointly by the British Electrical Development Association and the E.L.M.A. Lighting Service Bureau. Price 8s. 6d. net.

This book interprets the Factories Act, 1937, and questions concerning war-time control of factory lighting are fully explored in Chapter 6. Though primarily designed for industrial executives, the book contains valuable guidance for those called upon to advise on the legal aspects of the subject.

Complete Practical Income Tax. By A. G. MCBAIN, Chartered Accountant. Eleventh Edition, 1940. Demy 8vo. pp. xxiii and 370. London: Gee & Co. (Publishers), Ltd. Price 8s. net.

The fact that eleven editions of this work have appeared in fifteen years is an indication of its popularity. This edition includes a complete note of the 1940–41 position, in so far as it is dealt with by the Finance (No. 2) Act, 1939. The new excess profits tax is adequately considered, and in other respects the standard of its predecessors appears to be maintained in this edition.

Books Received.

Jones' Solicitors' Clerk. Part II. By the late CHARLES JONES. Twelfth Edition, 1940. Revised and re-written by F. W. BROADGATE. Crown 8vo. pp. ix and (with Index) 429. London: Sir Isaac Pitman & Sons, Ltd. Price 7s. 6d. net.

Notes of Cases.

Judicial Committee of the Privy Council.

Hori Ram Singh *v.* **R.**

Viscount Maugham, Lord Porter, and Sir George Rankin.
18th January, 1940.

PROCEDURE—FEDERAL COURT—APPEALS TO PRIVY COUNCIL—ONLY ADMISSIBLE IN SUBSTANTIAL CASES.

Petition for special leave to appeal from a judgment and order of the Federal Court of India partly reversing and partly affirming a judgment and order of the High Court, Lahore.

On the 10th September, 1937, the petitioner was charged in the Court of the First Class Magistrate at Dera Ghazi Khan for that, (*a*) being a public servant and in such capacity entrusted with medicines of the hospital at Mithankot, he committed a criminal breach of trust in respect of certain named medicines to the value of Rs.7 8a., and thereby committed an offence punishable under s. 409 of the Indian Penal Code; and (*b*) being a public servant, he wilfully and with intent to defraud omitted to record entries in the stock books of medicines and thereby committed an offence punishable under s. 477A of the Indian Penal Code. The magistrate found the petitioner guilty on both charges and sentenced him to six months' rigorous imprisonment on each count, to run concurrently. The petitioner then appealed against his conviction and sentence to the sessions judge of Dera Ghazi Khan, who acquitted him on the ground that under s. 270 (1) of the Government of India Act, 1935, the consent of the Governor was necessary before the proceedings against the petitioner could be instituted. Against the order of the sessions judge the Crown appealed to the High Court at Lahore, and a criminal division bench of that court (Sir Douglas Young, C.J., and Blacker, J.), on the 20th October, 1938, set aside the order of acquittal on the ground that s. 270 (1) of the Act did not apply, as an act done in the execution of his duty as a servant of the Crown could not by any stretching of the English language be made to apply to an act which was clearly a dereliction of his duty as such. The High Court accordingly directed the return of the record to the sessions judge for trial on its merits. The petitioner then applied for and received from the High Court a certificate for appeal to the Federal Court of India. That court—Sir Maurice Gwyer, C.J., Sulaiman and Varadachariar, JJ.—held that, so far as the charge under s. 409 of the Indian Penal Code was concerned, the acts in respect of which the petitioner was prosecuted could not be regarded as acts done or purported to be done in execution of his duty, and the consent of the Governor was not necessary, but that, as regards the charge under s. 477A of the Code, such a consent was necessary. The case was directed to be sent back to the sessions judge for hearing on the merits as regarded the charge under s. 409, and the proceedings under s. 477A were quashed for want of jurisdiction, the consent of the Governor not having been obtained. The Federal Court of India refused the petitioner leave to appeal to the Privy Council, and he now applied for special leave. By s. 270 (1) of the Act of 1935, "No proceedings, civil or criminal, shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India . . . except with the consent . . . in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion."

LORD MAUGHAM, giving the judgment of the Board, said that the question at issue related to the true construction of s. 270 (1) which was intended to apply some measure of protection to certain public servants in relation to acts done or purported to be done in the execution of their duty before the relevant date (1st April, 1937). The matter had been before the Federal Court, and an appeal from that court should not lightly be considered. In this case it did not seem to their lordships that the matter was anything but one of the construction of a very exceptional section which would have no application in the future, and it was a very technical point. They had had the view of the Federal Court with regard to it and did not think it a case in which they should advise His Majesty to grant leave to appeal.

COUNSEL: *Robert Gibson*, K.C., and *Colombos*; *Roberts*, K.C., and *Wallach*.

SOLICITORS: *Hy. S. L. Polak and Co.*; *The Solicitor, India Office*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

House of Lords.

Myers *v.* **Elman.**

Viscount Maugham, Lord Atkin, Lord Russell of Killowen, Lord Wright and Lord Porter.
5th December, 1939.

SOLICITOR—COURT'S JURISDICTION TO ORDER SOLICITOR TO PAY OPPOSITE PARTY'S COSTS—NOT LIMITED TO PERSONAL PROFESSIONAL MISCONDUCT JUSTIFYING STRIKING OFF ROLL.

Appeal from a decision of the Court of Appeal reversing a decision of Singleton, J.

The appellant was the plaintiff in an action brought in November, 1936, and the respondent, one Elman, was the solicitor who acted for certain of the defendants in it, accepting service of the writ and of the statement of claim on their behalf. The plaintiff alleged that all the defendants were guilty of fraudulent misrepresentation. The only defendant who actually appeared and disputed the claim was not one of those for whom the respondent solicitor acted. A jury awarded the plaintiff £9,400 damages, for which sum judgment was entered against all the defendants, with costs. Nothing could be recovered from any of the defendants. Immediately after judgment had been entered, the plaintiff asked the judge, in the light of the facts disclosed about the conduct of the solicitors appearing on the record for the respective defendants, to exercise the court's jurisdiction over its officers, and to order those solicitors to pay the costs recovered from their respective clients on the ground that each solicitor had been guilty of professional misconduct as an officer of the court in conducting the defence of his client. The judge ultimately, having held an inquiry and heard the evidence of the respondent, among others, held that he was not guilty of professional misconduct in filing defences which put in issue the charges of fraud made against his clients; but he also held that the respondent and his managing clerk had increased the plaintiff's difficulties and obstructed the interests of justice. He accordingly held the respondent guilty of professional misconduct as a solicitor and an officer of the court, ordering the respondent to pay the plaintiff one-third of the taxed costs of the action and two-thirds of the costs of the application made against the respondent and the other solicitors. The Court of Appeal (Greer and Slesser, L.JJ.; MacKinnon, L.J., dissenting) allowed the appeal, and the plaintiff now appealed. (*Cur. adv. vult.*)

VISCOUNT MAUGHAM said that if the Court of Appeal's view were correct that the court's jurisdiction to order a solicitor to pay the costs of proceedings was a punitive power resting on the personal misconduct of the solicitor, and precisely similar to the power of striking him off the Roll or suspending him, it would follow that the solicitor ought not to be made to pay costs unless he had himself been guilty of disgraceful conduct. The consequence would be that, however negligent or obstructive his conduct of the proceedings as solicitor had seemed to be, he had only to show that he left the whole matter in the hands of a clerk to escape the jurisdiction of the court in relation to costs. There seemed

to be no authority for that proposition. The jurisdiction to strike off the Roll or suspend was of a very different character. Professional misconduct had been properly defined as conduct which would reasonably be regarded as disgraceful by solicitors of good repute (*In re a Solicitor; ex parte The Law Society* [1912] 1 K.B. 302). Mere negligence, even if serious, would not suffice. The application was strictly personal, and related to the solicitor himself and his fitness to practise. In his (his lordship's) opinion, the jurisdiction as to costs was quite different. Negligence in the course of the proceedings was, in some cases, sufficient to justify an order. The primary object of the court was not to punish the solicitor but to protect the client and indemnify the injured party. R.S.C., Ord. LXV, r. 11, provided the necessary machinery where the person injured was the client of the solicitor. It was not limited to misconduct, but expressly extended to costs incurred improperly, or which had proved fruitless by reason of undue delay in proceeding under a judgment or order. The jurisdiction to order the solicitor to pay costs to the opposite party was exercised on similar grounds. The principle was clearly stated in Halsbury's "Laws of England" (2nd ed., vol. 31, p. 271). Hence the respondent could not dissociate himself from the acts and defaults of his managing clerk. Although, however, it was not, in his (his lordship's) view, necessary to show that the solicitor had been guilty of conduct which would justify suspension or striking off the Roll, the contention was correct that the jurisdiction in question ought to be exercised only where a serious dereliction of duty had been established either by the solicitor or by his clerks. His lordship then considered the facts of the case and said that he was unable to arrive at a different conclusion from that of Singleton, J. The appeal should be dismissed.

LORD ATKIN, in the course of his judgment, said that the words "professional misconduct" were not confined to cases where the solicitor himself was personally guilty; they covered cases where a duty owed by the solicitor to the court was not performed owing to the wrongdoing of the clerk to whom that duty had been entrusted.

LORD RUSSELL OF KILLOWEN, while agreeing that it was immaterial that no professional misconduct was attributable to the respondent solicitor personally, said that he would dismiss the appeal because, in his opinion, on the evidence before the House, the charges against the respondent's clerk had not been proved.

The other noble Lords agreed that the appeal should be dismissed.

COUNSEL: *R. A. Willes* and *Croasdell* (for *Gluckstein*, on war service); *T. F. Davis* and *Hobley*.

SOLICITORS: *Peacock & Goddard*, for *Edge & Ellison*, Birmingham; *Burnett L. Elman*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Dover Navigation Co., Ltd. *v.* Craig.

Lord Maugham, Lord Atkin, Lord Russell of Killowen, and Lord Wright.
13th December, 1939.

WORKMEN'S COMPENSATION—SEAMAN—SHIP SENT TO AFRICAN PORT—MOSQUITO-INFESTED AREA—DEATH FROM STING—WHETHER ARISING OUT OF EMPLOYMENT.

Appeal from a decision of the Court of Appeal, 82 SOL. J. 1031; 56 T.L.R. 232, allowing an appeal from South Shields County Court.

A ship on which the respondent workman, Craig, was a seaman, sailed from South Shields to the West African coast. In the course of the voyage it was necessary in August, 1936, to sail up a river and anchor in a mosquito-infested area where the seaman was stung while on board. As a result of that sting he contracted yellow fever and malaria and died. The county court judge dismissed a claim by his dependant for compensation in respect of his death. The Court of Appeal held that it was not possible to say that, where a workman was brought into a place of peril and received injury as a result of the peril, the injury did not arise out of the employment which required his exposure to that peril. (*Cur. adv. vult.*)

LORD MAUGHAM said that the authorities showed, if authorities were needed on that point, that the words connoted a certain degree of causal relation between the accident and the employment. It was impossible exactly to define in positive terms the degree of that causal connection, but certain negative propositions might, he thought, be laid down. For example, they were bound, he thought, to hold that the fact that the risk was common to all mankind did not prove that the accident did not arise out of the employment (*Thom* v. *Sinclair* [1917] A.C. 127; 61 SOL. J. 350; *Dennis* v. *White & Co.* [1917] A.C. 479; 61 SOL. J. 558). Nor could it be held that death or injury from the forces of nature, for example, earthquake and lightning, was not, merely because the accident was due to the forces of nature, an accident arising out of the employment (*Brooker* v. *Borthwick and Sons, &c., Ltd.* [1933] A.C. 669 and cases there cited; 77 SOL. J. 556). In those cases, however, it was laid down that "it has to be shown that the workman was especially exposed by reason of his employment to the incidence of such a force." That principle was enunciated in *Brooker* v. *Borthwick and Sons, &c., Ltd.* [1933] A.C., at p. 676, and there was no doubt as to its correctness. That view was sufficient for the decision on the appeal. It was impossible to doubt that the *Sea Rambler* was at one of the most dangerous places in the world at the time when the officers and crew were exposed to the risk of being bitten by day-flying mosquitoes which had themselves bitten human beings suffering from yellow fever. It was, he thought, irrelevant that the risk in question was a danger to which all persons in the same area were also subjected. It was sufficient that the unfortunate workman was especially exposed by reason of his employment to the risk of yellow fever. That was evidence of a sufficient causal relation to show that Craig contracted the fatal illness in the course of his employment; and it was not *ad rem* to show that other persons, voluntarily or otherwise, ran the same risk. The appeal should be dismissed.

The other noble lords concurred.

COUNSEL: *Maxwell Fyfe*, K.C., *J. Harvey Robson*, and *John Bassett* (for *Harvie Watt*, on war service); *Sellers*, K.C., and *Tyrie* (for *Alexander Ross*, on war service).

SOLICITORS: *Botterell and Roche*, for *Botterell, Roche and Temperley*, Newcastle-upon-Tyne; *Barnett Janner*, for *Winskell and Walker*, South Shields.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Appeals from County Courts.

Chapelton *v.* Barry Urban District Council.

Slesser, MacKinnon and Goddard, L.JJ.
30th January, 1940.

NEGLIGENCE—HIRE OF DEFECTIVE CHAIR—DECK CHAIR PROVIDED BY LOCAL AUTHORITY—CONDITION ON TICKET LIMITING LIABILITY—WHETHER TERM OF CONTRACT OF HIRING—INJURY TO HIRER—LIABILITY OF LOCAL AUTHORITY.

Appeal from Barry County Court.

On 3rd June, 1939, the plaintiff went with a friend to Cold Knap, a pebble beach within the area of the defendant council. He saw a notice, which was posted by the council, relating to the hire of deck chairs. The notice read: "Hire of chairs, 2d. per session of three hours. The public are respectfully requested to obtain tickets properly issued from the 'Automaticket' punch, in their presence, from the chair attendants. Tickets must be retained for inspection." The plaintiff took two tickets. The tickets stated on their face: "Barry Urban District Council. Cold Knap Chair Ticket. Not transferable,"

and then set out the hours for which they were available. No reference was made on the front of the tickets to any conditions, but on the back was printed: "The council will not be liable for any accident or damage arising from hire of the chair." The plaintiff glanced at the tickets, and put them in his pocket. When he sat on his chair the canvas came away from the top of the chair and he fell through and sustained injury. In an action against the council, in which the plaintiff alleged that the council were negligent in hiring to him a defective chair, the county court judge found for the plaintiff on the issue of negligence, but held that the condition printed on the ticket prevented him from recovering. The judge found as a fact that the plaintiff did not look at the back of the ticket and did not know that there were any conditions, but he found that the council had nevertheless given sufficient notice of the conditions. He accordingly gave judgment for the council. The plaintiff appealed.

SLESSER, L.J., allowing the appeal, said that in the case of contracts with railway companies and other such bodies the question was how far such a condition was made a term of the contract between the parties and whether it was brought to the notice of the party sought to be bound by it. There were a great many authorities on that point, but the present case was not in that category at all. He thought that the contract in the present case was as follows: The local authority offered chairs for persons to sit on on the beach, and the conditions on which they were offered were stated in the notice. That was the whole of the offer, and the plaintiff, who in common with others took a chair, took it on the terms that he was liable to pay twopence, and the local authority were liable for their ordinary common law obligations. The language of the notice showed that the tickets were merely receipts or vouchers showing how long a person was entitled to sit in a chair. The county court judge misunderstood the nature of the agreement. The ticket was not a term of the contract. Its object was merely to give a person who had taken it evidence that his obligation to pay twopence had been discharged. The class of case which Sankey, L.J., dealt with in *Thompson* v. *London, Midland and Scottish Railway Co.* [1930] 1 K.B. 41, which seemed to have influenced the county court judge, was different to the present case. The appeal must, therefore, be allowed, with costs.

MACKINNON and GODDARD, L.JJ., agreed.

COUNSEL: *Carey Evans*, for the appellant; *E. Ryder Richardson* (for *W. Griffith Williams*, on war service), for the respondents.

SOLICITORS: *Kingsley Wood, Williams & Murphy*, agents for *Edward T. Davies & Son*, Cardiff; *Wrentmore & Son*, agents for *Thomas John & Co.*, Cardiff.

[Reported by H. A. PALMER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Fawcett; Public Trustee** *v.* **Dugdale.**

Farwell, J. 24th January, 1940.

ADMINISTRATION—RULE IN HOWE v. LORD DARTMOUTH—TRUST FOR SALE OF UNAUTHORISED INVESTMENTS—NO POWER TO POSTPONE—APPLICATION OF RULE—TENANTS FOR LIFE ENTITLED TO INTEREST AT 4 PER CENT.—INCOME OF UNAUTHORISED INVESTMENTS INSUFFICIENT—RIGHT TO RESORT TO CAPITAL.

The testatrix, who died in 1934, by her will gave the residue of her estate in the following terms: "the balance of my estate to be invested and the income thereof to be divided equally between and amongst my said nephews and nieces for their respective lives and after their deaths equally amongst their lawful children principal and capital on their attaining twenty-one years of age," with gifts over on failure of the trusts of any share. The estate of the testatrix at her death included a number of investments which were not trustee investments. Certain of these were sold within one year of her death. At that date unauthorised investments over £12,000 in value were retained by the trustees. At the date of the summons all these had been realised except one, which for the time being was unsaleable. This summons was taken out by the Public Trustee, as trustee of the will, to determine whether the rule in *Howe* v. *Lord Dartmouth* ought to be applied, and, if so, how it should be applied on the facts of this particular case.

FARWELL, J., said the rule in *Howe* v. *Lord Dartmouth*, 7 Ves. 149, was made for the purpose of holding an even hand between capital and income. It was clear that this will created a trust for sale, so far as the unauthorised investments were concerned, with no power to postpone. There was no express trust for sale, but there was a trust to invest which meant to invest in trustee securities. The rule in *Howe* v. *Lord Dartmouth* accordingly applied. In applying this rule the Apportionment Act, 1870, ought not to be applied. Formerly, the general rule was to allow to tenants for life, the income which the investments, if they were sold and reinvested in Consols, would produce. In recent years, as there was a possibility of investing trust funds in securities at a higher rate of interest, the general rule was to allow 4 per cent. In the present case there was no reason to depart from the modern practice. It was the duty of the trustees in a case of this kind to have the unauthorised investments valued at the end of the first year after the death of the testatrix. The tenants for life were entitled to receive each year income at 4 per cent. on such capital value of the unauthorised investments treated as an aggregate fund. If the income received on the unauthorised investments was more than sufficient to pay 4 per cent., then the balance would be added to capital. If the income was insufficient to pay 4 per cent., the tenants for life would not be entitled to immediate recoupment out of capital, but, when the unauthorised investments were sold, the trustees would then have in their hands a fund out of which the tenants for life would be entitled to be recouped the full 4 per cent. They also might be recouped out of subsequent income from unauthorised investments. But neither excess income from unauthorised investments, which had been accumulated and invested in the past, nor the proceeds of sale of unauthorised investments which at the date of realisation were not required to make up arrears of interest, were applicable to make up future arrears.

COUNSEL: *Wilfrid Hunt; Tonge; Droop.*

SOLICITORS: *Hamlins, Grammer & Hamlin*, for *Wade, Kitson & Rigg*, Leeds; *Hedley Norris & Co.*, for *Bickers, Peters & Heap*, York.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Norman's Will Trusts; Mitchell** *v.* **Cozens.**

Simonds, J. 2nd February, 1940.

WILL—CONSTRUCTION—GIFT ON BENEFICIARY BECOMING A WIDOW—BENEFICIARY DIVORCES HUSBAND—HUSBAND SUBSEQUENTLY DIES—MEANING OF "WIDOW."

The testator by his will gave his residuary estate to his trustees upon trust for his widow during her life, and after her death as to a moiety thereof upon trust for his daughter, Mrs. Mitchell, absolutely, and as to the other moiety upon trust for his daughter, Mrs. Cozens, during her life, and after her death in trust for her children. The testator directed his trustees, if Mrs. Cozens should become a widow and have no children, to pay and transfer her moiety of his residuary estate to her for her absolute use and benefit. If she should predecease her husband without leaving any children living at her death, the testator declared that the share of the residuary estate which would otherwise be paid to her children should be paid and transferred to Mrs. Mitchell absolutely. The testator died in 1931, and his widow in 1938; Mrs. Cozens had divorced her husband in 1936, and he died in 1939. There were no children of the marriage. She now claimed to be absolutely entitled to one-half of the testator's residuary estate. This summons was taken out by one of the trustees

of the will for the determination of the question whether Mrs. Cozens, by surviving her divorced husband, had become his widow.

SIMONDS, J., said that he had been referred to the Oxford English Dictionary for the meaning of the word "widow." It was there defined as "a woman whose husband is dead (and who has not married again); a wife bereaved of her husband." It could not be said that Mrs. Cozens was at any time a woman whose husband was dead. When Mr. Cozens died he was not her husband according to the ordinary use of language. It was impossible to say that Mrs. Cozens became the widow of a man she had divorced before his death. The result of giving a strict meaning to the word "widow" might be to leave a gap in the trusts of the will and result in a partial intestacy. If the testator had appreciated the difficulty he would have used different words. It was, however, impossible to construe the words "if my daughter shall become a widow" as meaning "if she shall survive Mr. Cozens, whether then her husband or not." The learned judge accordingly declared that Mrs. Cozens had not become the widow of Mr. Cozens and had not become entitled to have one-half of the residuary estate transferred to her.

COUNSEL: *E. J. T. Bagshawe; W. Gutch; G. A. Russo.*

SOLICITORS: *Eland, Nettleship & Butt; Stanley Evans & Co.*, for *E. H. Sedgwick*, Berkhamsted.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Welsh Church Acts, 1914 and 1919; *In re* Tithe Act, 1936.

Commissioners of Church Temporalities in Wales *v.* Representative Body of the Church in Wales and Tithe Redemption Commission.

Morton, J. 7th February, 1940.

CHURCH IN WALES—VESTING OF TITHE RENT-CHARGES—NEVER TRANSFERRED TO COUNTY COUNCIL—EXTINGUISHMENT OF TITHE RENT-CHARGES—REDEMPTION STOCK—LIABILITY TO REPAIR CHANCEL—RIGHT OF DIOCESAN AUTHORITY TO PORTION OF STOCK—"LAY IMPROPRIATOR"—WELSH CHURCH ACT, 1914 (4 & 5 Geo. 5, c. 91), ss. 3, 4; s. 8, (1) (*c*); ss. 10, 13, 28; WELSH CHURCH (TEMPORALITIES) ACT, 1919 (9 & 10 Geo. 5, c. 65), ss. 2, 4 (1); TITHE ACT, 1936 (26 Geo. 5 & 1 Edw. 8, c. 43), ss. 1, 2, 4, (5) (2) (*a*), s. 31, Sched. 7.

This summons was taken out by the Commissioners of Church Temporalities in Wales, a statutory corporation brought into being by s. 10 of the Welsh Church Act, 1914. The first defendants were the Representative Body of the Church in Wales (hereinafter called "the Representative Body"), a body incorporated by Royal Charter under s. 13. The second defendants were the Tithe Redemption Commission. This was a test case and raised the question whether the plaintiffs were, immediately before the 2nd October, 1936, when certain tithe charges were extinguished by the Tithe Act, 1936, liable to repair the chancel of the parish church of Llanglydwen, Carmarthen in the Diocese of St. Davids. Immediately before the 1st October, 1845, all tithes issuing out of lands in the parish belonged to the rector as such. As from that date all such tithes were commuted for tithe rent-charges which, under the appropriate Acts, became payable to the rector as the incumbent of the parish. On the 31st March, 1920, by the operation of the Welsh Church Acts, 1914 and 1919, the Church in Wales became disestablished. On this date, under s. 3 (1) of the Act of 1914, the ecclesiastical law of the Church in Wales ceased to exist as law. Under s. 4 (1) of the same Act, the tithe rent-charges, formerly payable to the rector of the parish, together with other properties, vested in the plaintiffs, subject, "in the case of all such property, to all tenancies, charges, and incumbrances, and to all rights and interests saved by this Act, affecting the property." Section 8 of the Act lays down how the plaintiffs were to deal with the various classes of property vested in them. Under sub-s. (1) (*c*) they were "to transfer any tithe rent-charge which was formerly appropriated to the use of any parochial benefice to the council of the county in which the land out of which the tithe rent-charge issues is situate." Section 28 (1) of the Act of 1914 provides: "Nothing in this Act shall affect any liability to pay tithe rent-charge, or the liability of any lay impropriator of any tithe rent-charge to repair any ecclesiastical building, but a county council shall not, by reason of being entitled to or receiving any tithe rent-charge under this Act, be liable for the repair of any ecclesiastical building." Section 4 (1) of the Act of 1919 authorised the plaintiffs to postpone the transfer of Welsh ecclesiastical property, which had vested in them. So long as any tithe rent-charge which was previously attached to a benefice remained vested in them, the plaintiffs were to be deemed to be the owners of a tithe rent-charge attached to a benefice for the purposes of the Tithe Rentcharge (Rates) Act, 1899. The plaintiffs exercised their power to postpone the transfer of these tithe rent-charges, and did not transfer them to the county council. On the 2nd October, 1936, the tithe rent-charges were extinguished by s. 1 (1) of the Tithe Act, 1936, and the plaintiffs became entitled under s. 2 (1) to receive redemption stock as compensation. Section 31 (1) of the Act of 1936 provides: "The provisions of this section shall have effect with respect to liabilities to repair chancels of churches or other ecclesiastical buildings arising from the ownership of (a) tithe rent-charge extinguished by this Act in respect of which stock is to be issued under this Act, . . . (2) the Diocesan Authority shall be entitled to receive a part of the stock to be issued in respect of the rent-charge equal in amount to such a sum (in this section and in the Seventh Schedule to this Act referred to as 'the sum required for repairs') as may be reasonably sufficient, having regard to the condition of the chancel or building at the appointed day, to provide for the cost of future repairs thereof, and to provide a capital sum the income of which will be sufficient to insure it for a sum adequate to reinstate it in the event of its being destroyed by fire." The Representative Body, the first defendants, were the diocesan body for the purposes of this section. The seventh schedule of the Act provides for the apportionment of this liability to repair chancels. By this summons the plaintiffs asked (i) whether the liability to repair the chancel of the church had, before 2nd October, 1936, by virtue of s. 28, or otherwise by virtue of the Acts of 1914 and 1919, ceased to attach to the ownership of the tithe rent-charges, and whether or not the rent-charges had before that date so ceased to be subject to that liability within the meaning of para. 1 (*b*) of Pt. I of the seventh schedule to the Tithe Act, 1936; and (ii) whether or not the Representative Body was precluded by the Acts of 1914 and 1919 from receiving, pursuant to the Tithe Act, 1936, a part of the redemption stock to be issued by the Tithe Redemption Commission for compensation.

MORTON, J., said that apart from any statutory relief in the Welsh Church Act, 1914, immediately before the 2nd October, 1936, the plaintiffs, as legal owners of the tithe rent-charges would have been liable to repair the chancel (*Wickhambrook Parochial Church Council* v. *Croxford* [1935] 2 K.B. 417; 79 SOL. J. 418). It was contended on behalf of the plaintiffs that s. 3 of the Act of 1914 destroyed this liability to repair from the date of disestablishment. The Representative Body on the other hand contended that s. 3 did not apply to the present case. Even if the section would have applied, s. 4 saved the liability. The learned judge held on this part of the case the plaintiffs' contention was correct. The liability to repair the chancel was part of the ecclesiastical law of the Church in Wales and, apart from any other provisions of the Act, would have ceased under s. 3 (1). It was not necessary to decide whether the liability fell within the

words "all rights and interests saved by this Act affecting the property" in s. 4 (1). There were, however, difficulties in so holding. The learned judge then considered s. 28. He said "lay impropriator" in that section was used in contradistinction to "ecclesiastical appropriator." A county council was a "lay impropriator" within the meaning of the section. It followed that the plaintiffs were also a "lay impropriator." As such the section expressly said nothing in the Act was to relieve them of liability. The Legislature had expressly exempted the county council from liability for the repair of any ecclesiastical building. This was a strong indication that it was not intended to exempt the plaintiffs. They were not merely bare trustees during the period in which the tithe rent-charges were vested in them. They had important powers and duties, and it was conceivable that it was intended that they should be liable for the repairs of the chancel. As owners of such rent-charges they would immediately before the 2nd October, 1936, have been liable, unless the Act of 1914 relieved them. Section 28 of the Act of 1914, however, expressly said that nothing in that Act should relieve them. There was no other Act which granted relief, the plaintiffs were therefore liable for the repairs. This construction of s. 28 led to a strange result. It was the intention that ultimately the tithe rent-charges should be transferred to the county council free from any liability to repair the chancel. As the plaintiffs held the rent-charges on the 2nd October, 1936, and at that date were liable for these repairs, it followed that under s. 31 of the Tithe Act, 1936, a portion of the redemption stock would go to the Representative Body as the diocesan authority. This would happen because the plaintiffs had not transferred the tithe rent-charges before the 2nd October, 1936. The county council would thus be saddled with the very liability from which s. 28 of the Act of 1914 was intended to free it.

COUNSEL: *Rewcastle*, K.C., *J. V. Nesbitt* (*Meyrick Beebee* with him), and *R. T. E. Latham*, for the plaintiffs: *Roxburgh*, K.C., *Wigglesworth* and *David Pennant* (absent on war service), for the Representative Body; *Danckwerts*, for the Tithe Redemption Commission.

SOLICITORS: *R. Primrose; Milles, Jennings White & Foster: Official Solicitor, Minister of Agriculture and Fisheries.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

High Court—King's Bench Division.

Wilkinson *v.* Chetham-Strode.

Asquith, J. 11th December, 1939.

ROAD TRAFFIC—PEDESTRIAN CROSSING PLACES—STREET REFUGE—WHETHER PART OF CROSSING.

Action for damages for personal injuries.

In July, 1938, the plaintiff was knocked down and injured by a motor car driven by the defendant in Artillery Row, London, S.W., close to the junction of that street with Victoria Street. At the time of the accident the plaintiff was walking along the southern pavement of Victoria Street from west to east. In the middle of the mouth of Artillery Row was a refuge, consisting of three sections of paved surface, raised above the level of the carriage-way, the middle one carrying a lamp standard and the other two carrying a pylon each. Between the section carrying the lamp standard and each section carrying a pylon there were gaps of unpaved roadway about four feet wide. A pedestrian, therefore, could cross the mouth of Artillery Row by either of those gaps without mounting the paved parts of the island, but remaining throughout on the level of the carriage-way. The crossing was indicated on the one side by a row of metal studs and on the other side a "stop" line. The road junction where the accident took place was controlled by four traffic lights, two showing east and west along Victoria Street, and two showing north and south along Artillery Row and Buckingham Gate. Asquith, J., found that the accident was due to the failure of both parties to make allowance for the imperfect alignment of Buckingham Gate with Artillery Row, the effect of which was to screen from each other a car crossing from Buckingham Gate and a pedestrian standing at the southern end of the refuge; that neither party used reasonable care, having regard to the peculiarities and dangers of the crossing which a reasonably vigilant person would have appreciated: that the negligence of both parties was substantially simultaneous and left no room for the rule of last opportunity; therefore that, if the liability of the parties were to be determined purely by the common law and there were no question of a pedestrian crossing governed by special statutory regulations, the plaintiff's claim must fail because of his contributory negligence: and that the crossing was a "crossing at a road intersection where traffic is for the time being controlled . . . by light signals" within reg. 5 of the Pedestrian Crossing Places (Traffic) Provisional Regulations, 1935, which regulation provides that the driver of a vehicle at such a crossing must "allow free and uninterrupted passage to every passenger who has started to go over the crossing before the driver receives a signal that he may proceed." It was contended for the defendant that the transit from side to side of Artillery Row consisted of two crossings, one from the west pavement to the island and the second from the island to the east pavement, and that the plaintiff was not a person on a crossing within reg. 3, or a person who had started to go over a crossing within reg. 5, but was a person stepping suddenly on to a crossing in the same way as did the plaintiff in *Chisholm* v. *London Passenger Transport Board* ([1939] 1 K.B. 426; 82 SOL. J. 1050), and so was guilty of contributory negligence. (*Cur. adv. vult.*).

ASQUITH, J., said that the whole transit across the mouth of Artillery Row was a single crossing. That, however, did not dispose of the matter. Regulation 5 must be construed as meaning that the right of the pedestrian to a free and uninterrupted passage was only to be enjoyed by him so long as he was on the crossing, and he ceased to be on the crossing when he reached an island and stepped on to it, or, as in the present case, into a space enclosed by its contours and within its shelter. For the present purpose a refuge was a separate entity from the crossing. A person, therefore, who stepped off an island was stepping from something which was not part of the crossing on to something which was, and by analogy with *Chisholm* v. *London Passenger Transport Board*, *supra*, he was capable of contributory negligence if he stepped on to it abruptly so that traffic travelling at a reasonable speed could not stop in time to avoid hitting him. That was what the plaintiff had done in the present case, and his claim must fail.

COUNSEL: *Salmon; Armstrong-Jones.*

SOLICITORS: *Pothecary & Barratt; Stanley & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Hancock *v.* B.S.A. Tools, Ltd.

Atkinson, J. 11th December, 1939.

MASTER AND SERVANT—WORKMAN PAID ONLY FOR WORK DONE—WHETHER ENTITLED TO PAYMENT WHILE ABSENT THROUGH ILLNESS.

Action claiming arrears of wages.

The plaintiff entered the service of the defendants on the 2nd September, 1937, and left on the 17th June, 1938, of his own accord. His claim for wages was in respect of two periods from the 8th to 28th January, and from the 6th April to the 11th May, 1938, when he was unable to work owing to sickness. The plaintiff contended that, where the contract of service was subsisting, his right to wages was not suspended merely because he was away ill unless there were an express or implied term in his contract of employment to that effect. The defendants contended, first, that the plaintiff's right to be paid wages during sickness was excluded by the express terms of his contract; in addition, or in the alternative, that

he was an hourly-rate workman; and that, by the usage of the trade, such workmen were only paid for the hours which they actually worked. On the 1st September, 1937, the plaintiff was engaged on the basis of being paid 39s. a week for a forty-seven hours week plus the national bonus of 16s. 6d. a week. After a few days he was put on piece-work, and if his pay then amounted to less than he would have received if working on time, the amount was made up to him and he also received the bonus. The defendants further contended that men in the plaintiff's position were employed, as they knew, on the terms of no work, no pay; if a man were sick, or there were a public holiday, or he applied for leave for family reasons, he was not entitled to pay; that the men must be assumed to be engaged on terms which were universally recognised as the practice throughout the trade; that a notice was conspicuously displayed which stated that employment was on an hourly basis, which meant that a man would only be paid for the hours on which he worked; and that if that were the basis of the contract, the plaintiff was not entitled to receive pay while sick.

ATKINSON, J., said that the action was brought on a misunderstanding of what was decided by the Court of Appeal in *Marrison* v. *Bell* ([1939] 2 K.B. 187; 83 SOL. J. 176). There had been two lines of cases running side by side from time immemorial, those in which an employee had been held entitled to pay when he was ill on the basis that his engagement was for a month, or a year, and the consideration was his readiness and willingness to work; and those where the consideration was the work done, in which, if the work was not done, the pay was not earned. Into which category did the present case fall? It had been laid down by the Court of Appeal that in every case it was a question of ascertaining what the real terms of the contract were. In the present case it seemed too clear for argument that it was a term of the plaintiff's employment that he should only be paid for the work which he did. He (his lordship) was satisfied that that was a custom of this particular trade or industry, and that the plaintiff understood it to be so. Then came *Marrison* v. *Bell*, *supra*, which led the plaintiff to suppose that, as a matter of law, he was entitled to something, and so he made the present claim. The question was purely one of fact, and he (his lordship) found that the plaintiff was only entitled to be paid for the work which he did. There must be judgment for the defendants.

COUNSEL: *Long*, K.C., and *Morle*; *Cartwright Sharp*, K.C., and *Blain*.

SOLICITORS: *T. D. Jones & Co.*; *Joynson-Hicks & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Rousou *v.* Photi (Gort Estates Co., Third Parties).

Atkinson, J. 13th December, 1939.

HOUSING—ANNUAL "RENT"—METHOD OF CALCULATING—WHETHER SUM PAID BY LANDLORD FOR RATES ON DEMISED PREMISES TO BE DEDUCTED—HOUSING ACT, 1936 (26 Geo. V, and 1 Edw. VIII, c. 51), s. 2.

Issue directed to be tried in an action for damages for negligence.

The plaintiff claimed from the defendant damages for personal injuries suffered by him through the falling of the ceiling of the room which the defendant let to him for 7s. a week. The room was part of the second floor of a house, which floor the third parties let to the defendant at 27s. 6d. a week, themselves paying all rates and taxes, the amount of which attributable to the second floor was £5 10s. a year. If the tenancy from the third parties to the defendant lasted a year, a total of £45 10s. would be paid by him to them. The defendant having claimed to be indemnified by the third parties against the plaintiff's claim, contending that the tenancy fell within s. 2 of the Housing Act, 1936, the issue was directed to be tried whether or not that contention was correct. By s. 2 of the Act: "in any contract for letting for human habitation a house at a rent not exceeding (*a*) in the case of a house situate in the Administrative County of London £40 . . . there shall, notwithstanding any stipulation to the contrary, be implied a condition that the house is, at the commencement of the tenancy, and an undertaking that the house will be kept by the landlord during the tenancy, in all respects reasonably fit for human habitation."

ATKINSON, J., said that the question was what was the meaning of "rent" in s. 2. It was argued on behalf of the company that it meant the amount actually paid by the tenant to the landlord, notwithstanding that the landlord had to pay away part of that sum in rates, and it was pointed out that if 17s. 6d. were multiplied by fifty-two the product came to more than £40 in a year. For the defendant it was contended that the section referred to the true, or net, rent which was arrived at after deducting at least the rates and taxes payable by the company; further, it was contended that a weekly letting at 17s. 6d. was not the same as a yearly letting at £45 10s. because it did not allow for possible periods when the premises were vacant. The section did not specifically state that the rent to which it referred was one of £40 a year; but it must be taken that the Legislature had in mind an annual letting at that figure. The object of the enactment clearly was to protect the tenants of small houses. It was reasonable to assume that the object was also to provide a uniform basis for that protection, whether a house were let at an inclusive or at a net rent. It was not likely that the Legislature contemplated an astute landlord's being able to take a house out of the Act by saying that he would pay the rates and adding the amount of them to the rent, thus bringing the inclusive figure over £40 a year. The conclusion was inevitable that "rent" in the section meant the sum which the tenant paid to occupy the premises in normal circumstances and without adventitious advantages—the sum which the landlord would put into his pocket as rent after paying rates and so on. The house was, therefore, within the section and judgment would be entered on the issue for the defendant, with costs. It was unnecessary to decide the further point whether, in calculating the annual rent, it was sufficient to multiply the weekly rent by fifty-two, or whether some deduction must be made from the sum so arrived at to allow for possible "voids."

COUNSEL: *Norman Skelhorn*; *G. F. Kingham.*

SOLICITORS: *Leonard Kasler*; *Walfords.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Butler *v.* Standard Telephones and Cables, Ltd.; McCarthy *v.* Same.

Lewis, J. 20th December, 1939.

TRESPASS—TREES—PLAINTIFF'S HOUSE DAMAGED BY ROOTS—GOOD CAUSE OF ACTION.

Action for damages for trespass and negligence.

The plaintiffs were the respective owners of two houses on opposite sides of a short avenue leading from Green Lane, Eltham, to a sports ground belonging to the defendant company. In the winter of 1930–31 the company planted two rows of Lombardy poplars down the avenue. The trees, then 7 feet or 8 feet high, had, in 1939, reached a height of over 40 feet. In 1934 McCarthy found signs of severe settlement in his house and had the flank wall underpinned. When excavations were made for that purpose it was found that some of the roots of the poplar had spread up to and were burrowing underneath the foundations. In 1937 there was a further settlement in McCarthy's house and a settlement also appeared in Butler's. Butler and McCarthy accordingly brought this action against the company claiming damages for trespass or negligence.

LEWIS, J., said that the plaintiffs had contended that the subsidence of their houses was due to the poplar trees, the roots of which had, by sucking up the water in the clay soil, caused a shrinking of the soil under the foundations. The

defendants, on the other hand, contended that the shrinkage was due to natural causes—namely, the natural drying of clay soil in times of drought, and had nothing to do with the poplars. He was satisfied that the subsidence was due to the action of the roots of the poplars. The defendants had argued, however, that that did not give the plaintiffs any right of action, and had cited various cases. He was not satisfied that those cases supported the defendants' contention. There was no case in the books of any action in respect of damage alleged to have been caused by the roots of a tree except an Irish decision, *Middleton* v. *Humphries*, 47 Ir. L.T. 160, where the roots of a tree had damaged the plaintiff's wall, and Ross, J., had held that that gave the plaintiff a cause of action, and had awarded damages. He (Lewis, J.) thought that that decision was right. There was no difference in fact or in law between damage caused by overhanging branches and damage caused by roots burrowing underground. It seemed clear that such an action as the present would lie, and that a plaintiff had a right not only to cut the roots of the trees, but also to recover damages if damage were suffered by him owing to the action of the roots. The plaintiffs were therefore entitled to damages, and there would be judgment for each for £225.

COUNSEL: *Manningham Buller* and *John Lawrence*; *Havers*, K.C., and *McGougan*.

SOLICITORS: *Janson, Cobb, Pearson & Co.*; *Merrimans*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Obituary.

MR. R. MORTIMER.

Mr. Reginald Mortimer, barrister-at-law, died on Friday, 8th March. Mr. Mortimer was called to the Bar by the Inner Temple in 1885.

SIR FRANK SARGENT.

Sir Frank Leyden Sargent, solicitor, and Mayor of Islington from 1930–31, died on Saturday, 24th February, at the age of sixty-eight. Sir Frank was admitted a solicitor in 1911, and received the honour of knighthood in 1939.

COLONEL W. P. READE.

Colonel William Parsons Reade, solicitor, of Congleton, died on Wednesday, 28th February, at the age of sixty-five. He was admitted a solicitor in 1899, and held many public appointments, including those of clerk to the Congleton Borough and County Justices, clerk of indictments on the North Wales and Chester Circuit, and clerk of indictments at the Chester Quarter Sessions.

MR. J. R. JONES.

Mr. John Roberts Jones, solicitor, of Messrs. Roberts Jones & Co., solicitors, of Rhyl, died on Thursday, 22nd February, at the age of seventy-three. Mr. Jones was admitted a solicitor in 1890.

MR. H. F. NORRIS.

Mr. Hedley Faithfull Norris, solicitor, of Messrs. Hedley Norris & Co., solicitors, of 45, Lincoln's Inn Fields, W.C.2, died on Monday, 4th March. Mr. Norris was admitted a solicitor in 1884.

MR. F. W. PERKINS.

Mr. Frederick William Perkins, solicitor, of 40, Margaret Street, Cavendish Square, W.1, died on Friday, 8th March, at the age of fifty-six. Mr. Perkins was admitted a solicitor in 1914.

MR. H. F. PLANT.

We regret to report the death on the 10th instant, after a short illness, of Mr. Harvey Forshaw Plant, of the firm of Gregory, Rowcliffe & Co., 1, Bedford Row, W.C.1, at the age of fifty-two. He was articled to Mr. H. A. E. Plant, of Preston, in 1907, and was admitted a solicitor in 1912. He served during the Great War in the Royal Artillery, and was awarded the Military Cross in 1918. In 1920 he became a partner in the firm of Rawle, Johnstone & Co. (now Gregory, Rowcliffe & Co.) A zealous worker in the cause of charity, he devoted himself especially to the cause of the blind, and was a member of the Council and Vice-Treasurer of the National Library for the Blind, and, in 1936, Vice-Chairman of the Metropolitan Society for the Blind. In 1931 he became a director of the Solicitors' Benevolent Association, and in 1938 was elected Chairman. During his year of office he applied himself wholeheartedly to the extension of the association, and a record number of new members was added. He was also a Governor of the Foundling Hospital, a trustee of the United Law Clerks' Society, solicitor to the Hon. Society of Lincoln's Inn, and, since 1933, a director of The Solicitors' Law Stationery Society, Limited. In 1918, he married Phœbe Bertine, only daughter of the late Sir Roger Gregory.

Societies.

Barristers' Benevolent Association.

The committee of this Association desires to remind all members of the Bar that the work of the Association continues to be carried on in circumstances which urgently require that there shall be no diminution of the support which it is accustomed to receive. The claims on its funds are even more pressing than in normal times, and are likely to increase as time goes on. Some loss of income has already resulted from the inevitable withdrawal of their subscriptions by those whose incomes are so far affected by the war that they are unable to keep them up. This loss should, however, be met by new and increased subscriptions, and donations from those who are in a position to send them, and whatever other economies have to be effected by a member of the Bar it is hoped that he will discharge his obligations to the Association, and to those whose wants it relieves, to the full extent of his ability to do so. The committee is already making plans for the Annual General Meeting of the Association, which will be held in July next, under the chairmanship of a distinguished member of the profession, who will, it is hoped, be able to announce that, in spite of all the difficulties of the present time, a worthy response has been made to the plea for support of the Association which last year's chairman, H.R.H. The Duke of Kent, addressed to his fellow members of the Bar. Cheques should be drawn to the order of the Association, and sent to the office of the Association, 5, Crown Office Row, Temple, London, E.C.4, and will be gratefully acknowledged.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held at 60, Carey Street, Chancery Lane, W.C.2, on Wednesday, the 6th March, 1940. Mr. Henry White, M.A. (Winchester), was in the chair and the following Directors were present: Mr. Gerald Keith, O.B.E. (Vice-Chairman), Mr. G. L. Addison, Mr. Ernest E. Bird, Mr. G. S. Blaker (Henley-on-Thames), Mr. P. D. Botterell, C.B.E., Mr. R. Bullin, T.D., J.P. (Portsmouth), Mr. T. G. Cowan, Mr. C. H. Culross, Mr. T. S. Curtis, Mr. E. F. Dent, Mr. R. B. Pemberton and Mr. E. Bevan Thomas (Cardiff). £1,045 was distributed in grants to necessitous cases, and five new members were admitted.

The Grotius Society.

A meeting of the Society was held at 2, King's Bench Walk, Temple, E.C.4, on Wednesday, 6th March, at 4.15 p.m., when Dr. W. R. Bisschop opened a discussion on the legal points involved in the case of the s.s. "Altmark." On Wednesday, 13th March, a meeting was held at The Royal Society, Burlington House, Piccadilly, W., when a paper was read by Dr. Erwin Loewenfeld on "The Mixed Courts in Egypt after the Treaty of Montreux."

Union Society of London.

The following meetings have already been held during March: Friday, 1st March, at 6 p.m.—Joint debate with the Hardwicke Society at the Cock Tavern, Fleet Street. Motion: "That this House would welcome the

sending of an Allied Expeditionary Force to Finland." Mr. James Petrie (ex-president, H.S.) opened the debate and Mr. M. F. M. Carey (U.S.) spoke second. Another meeting was held on Wednesday, 13th March. The following meetings are to take place during April: Wednesday 10th April, at 5.30 p.m., and Wednesday, 24th April at 5.30 p.m., at Mr. H. Salter Nichols Chambers, 2, Garden Court, Temple (1st Floor).

Law students and others interested in debating are invited to attend a debate. Information about the Society can be obtained from the president, Mr. Robert W. Orme, 193, Gloucester Place, N.W.1, or at the Chambers of Mr. H. Salter Nichols (address as above).

The Records Committee of the Essex County Council would be glad to learn of the existence of court rolls, rentals, maps and other manorial documents in the possession or custody of solicitors or other persons living outside Essex. The Essex Record Office, County Hall, Chelmsford, is a County Manorial Repository scheduled by the Master of the Rolls under the Law of Property (Amendment) Act, 1924, and court rolls, etc., for nearly 300 Essex manors have now been deposited with the County Council. The Records Committee would greatly appreciate the receipt of further manorial documents, deeds, etc., and all deposits may be reclaimed, if so desired, at any time in the future. The Clerk of the County Council will be pleased to reimburse the cost of carriage.

War Legislation.

(*Supplementary List, in alphabetical order, to those published, week by week, in* THE SOLICITORS' JOURNAL, *from the 16th September, 1939, to the 9th March, 1940, inclusive.*)

ROYAL ASSENT.

The following Bills received the Royal Assent on the 14th March:—

Cotton Industry.

Industrial Assurance and Friendly Societies (Emergency Protection from Forfeiture).

Mental Deficiency (Scotland).

Progress of Bills.

House of Lords.

Agriculture (Miscellaneous War Provisions) Bill [H.C.].
Read Third Time. [14th March.

Old Age and Widows' Pensions Bill [H.C.].
Read Second Time. [14th March.

Rating and Valuation (Postponement of Valuations) Bill. [H.C.].
Read Second Time. [12th March.

Solicitors (Emergency Provisions) Bill [H.L.].
Read Third Time. [14th March.

Special Enactments (Extension of Time) Bill [H.L.].
Read Third Time. [21st February.

House of Commons.

Agricultural Wages (Regulation) Amendment Bill [H.C.].
Read First Time. [12th March.

Societies (Miscellaneous Provisions) Bill [H.C.].
Read First Time. [1st February.

Statutory Rules and Orders.

No. 303. **Animal.** Diseases of Animals. The Foreign Hay and Straw (Amendment) Order, dated February 28.

No. 260. **British Nationality and Status of Aliens.** The Naturalization (Amendment) Regulations, dated January 30.

No. 288/L.3. **Courts (Emergency Powers) (No. 1) Rules,** dated March 1.

No. 329. **Customs.** The Export of Goods (Control) (No. 7) Order, dated March 5.

No. 308. **Czecho-slovakia** (Settlement of Financial Claims) Order, dated March 7.

No. 290. **Emergency Powers (Defence).** Order in Council, dated March 7, amending the Defence (General) Regulations, 1939.

No. 291. Emergency Powers (Defence). Order in Council, dated March 7, adding Regulation 5B to the Defence (Finance) Regulations, 1939.

No. 293. Emergency Powers (Defence). The Coal Mines General Regulations (Installation and Use of Electricity) Modification Order, dated February 28.

No. 325. Emergency Powers (Defence). Food. Order, dated March 8, amending the Directions dated January 6, under the Rationing Order, 1939.

No. 323. Emergency Powers (Defence). Order, dated March 8, amending the Food Control Committees (Registration of Establishments) Order, 1939.

No. 326. Emergency Powers (Defence). Order, dated March 8, amending the Meat (Maximum Retail Prices) Order, 1940.

No. 327. Emergency Powers (Defence). Order, dated March 8, amending the Meat (Prescribed Wholesale Prices) Order, 1940.

No. 340. Emergency Powers (Defence). Order, dated March 9, amending the Meat (Prescribed Wholesale Prices) (Northern Ireland) Order, 1940.

No. 279. Emergency Powers (Defence). The Railways (Annual Accounts and Returns) Order (No. 2). dated February 28.

No. 324. Emergency Powers (Defence). Order, dated March 8, amending the Rationing Order, 1939, and appointing the day on which that Order is to come into force in relation to Meat.

No. 295. Emergency Powers (Defence). Vessels under Construction outside the United Kingdom. The Transfer of Ownership (Foreign Constructed Vessels) Order, dated March 4.

No. 292/L.4. **Juvenile Courts (Metropolitan Police Court Area) (No. 2) Order,** dated February 26.

No. 301. **National Health Insurance** (Joint Committee) Regulations, dated February 16.

No. 302. National Health Insurance (Emergency Payment of Benefit) Regulations, dated February 20.

No. 296. **Prices of Goods** (Permitted Increase) Order, dated March 2.

No. 314. **Road Haulage** (Emergency Provisions) (Procedure) Regulations, dated February 21.

No. 315. **Trade Boards** (Emergency Provisions) Regulations, dated February 23.

No. 316. Trade Boards (Notices and Proceedings) (Emergency) Regulations, dated February 23.

No. 294. **War Risks Insurance** (General Exceptions) Order, dated March 2.

Non-Parliamentary Publication.

STATIONERY OFFICE.

List of Emergency Acts and Statutory Rules and Orders. Supplement 12, dated March 6.

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The King has approved a recommendation of the Home Secretary that Mr. DEREK CURTIS BENNETT be appointed Recorder of Tenterden, to succeed Mr. J. F. Eastwood, K.C., who has been appointed a Metropolitan Police Magistrate.

The following promotions, transfers and re-appointments have been announced by the Colonial Legal Service:—

Mr. N. J. BROOKE, Judge of the Protectorate Court, to be Puisne Judge, Nigeria; Mr. C. FURNESS-SMITH, Attorney-General, Zanzibar, to be Attorney-General, Tanganyika Territory; Mr. J. H. JARRETT, Colonial Secretary, Bahamas, to be Chief Justice, Windward and Leeward Islands.

Mr. GEORGE RIVERS BLANCO WHITE, K.C., and Mr. ROGER WILLIAM TURNBULL, have been elected Benchers of Lincoln's Inn in place of the late Sir Henry Chartres Biron and the late Mr. Lucius Widdrington Byrne. Mr. White was called to the Bar by Lincoln's Inn in 1907, and took silk in 1936. Mr. Turnbull was called to the Bar by Lincoln's Inn in 1908.

Notes.

Sir Frederick Rowland has been nominated as a representative of the Corporation of the City on the London Court of Arbitration, in succession to the late Mr. J. H. Raphael.

The first of the new series of Warburton Lectures in Lincoln's Inn Chapel will be given by Bishop Hensley Henson on Sunday, 17th March, at 11.15 a.m. This series will consist

of six lectures on "Christian Apologetic—the Appeal to History." The subject of the first lecture is "Why the Appeal to History is an essential part of Christian Apologetic."

Mr. C. Pilling presided at a presentation at the Law Courts recently to Mr. J. K. Munro. Mr. F. Rhodes, President of the High Court Journalists' Association, who presented Mr. Munro with a cheque, referred to Mr. Munro's long association with the Law Courts as a reporter. Mr. Munro, in reply, said he had been associated with reporting at the Law Courts for forty-two years. He was elected an honorary member of the association.

The Minister of Health, Mr. Walter Elliot, has issued his quarterly statement showing the number of persons in receipt of poor relief in England and Wales for the quarter ended September, 1939. Except for an increase following the August Bank Holiday, the usual seasonal decrease in the number of persons in receipt of relief was recorded during each week of July and August. During September the numbers were affected by the outbreak of war. At the end of September, 1939, the total number was 959,132, a decrease of 72,289, when compared with the corresponding total at the end of June, 1939, and a decrease of 71,844, when compared with the end of September, 1938.

Mr. C. E. A. Bedwell, in a lecture on the Inns of Court recently to a joint meeting of the Bristol Law Club and the King's College Faculty and Law Society, referred to the early links between the Inns of Court and Bristol, says *The Times*. Towards the end of the sixteenth century the Inns of Court extended their influence beyond the shores of England, and the Middle Temple through its members encouraged and contributed to colonising enterprises. Richard Hakluyt in 1582 went to Bristol to secure from the citizens a promise to equip two ships to sail with Sir Humphrey Gilbert. Among those who visited his chambers and established a friendship with Hakluyt was young Walter Raleigh. Hakluyt received from Queen Elizabeth the grant of the first canonry or prebend to fall vacant at Holy Trinity, Bristol.

EASTER HOLIDAYS.

Next week THE SOLICITORS' JOURNAL will be published on Wednesday. Contributions and Advertisements intended for that issue must be received by first post on Tuesday.

Wills and Bequests.

Mr. Henry Brighouse, retired solicitor, of Ormskirk, left £16,280, with net personalty £14,938.

Mr. James Carter, solicitor, of Buckhurst Hill and Gray's Inn, left £18,670, with net personalty £16,326.

Mr. Arthur Joseph Clarke, J.P., solicitor, of High Wycombe, left £68,483, with net personalty £58,656. He left £100 to High Wycombe and District War Memorial Hospital.

Mr. Alfred Clegg, solicitor, of Harrogate, Yorks, formerly of Sheffield and Barnsley, left £89,539, with net personalty £85,747.

Mr. Robert Watson Cooper, solicitor, of Newcastle-upon-Tyne, left estate of the gross value of £221,099, with net personalty £216,192. He left £2,000 to the Northern Counties Society for Granting Annuities to Governesses and others in reduced circumstances.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT. No. 1.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
Mar. 18	Andrews	Jones	More
,, 19	Jones	Ritchie	Reader
,, *20*	*Ritchie*	*Blaker*	*Andrews*
,, 21	Blaker	More	Jones

	GROUP A.		GROUP B.	
DATE.	MR. JUSTICE BENNETT. Witness.	MR. JUSTICE SIMONDS. Non-Witness.	MR. JUSTICE CROSSMAN. Witness.	MR. JUSTICE MORTON. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Mar. 18	Andrews	Ritchie	Blaker	Reader
,, 19	Jones	Blaker	More	Andrews
,, *20*	*Ritchie*	*More*	*Reader*	*Jones*
,, 21	Blaker	Reader	Andrews	Ritchie

The EASTER VACATION *will commence on Friday, 22nd March, and terminate on Tuesday, 2nd April,* 1940, *inclusive.*

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October 1939) 2%. Next London Stock Exchange Settlement, Thursday, 28th March, 1940.

	Div. Months.	Middle Price 13 Mar. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	108½	3 13 9	3 6 9
Consols 2½%	JAJO	73½	3 8 0	—
War Loan 3½% 1952 or after	JD	99¼	3 10 6	—
Funding 4% Loan 1960–90	MN	112⅝	3 11 1	3 2 11
Funding 3% Loan 1959–69	AO	97xd	3 1 10	3 3 2
Funding 2¾% Loan 1952–57	JD	96⅛	2 17 0	3 0 5
Funding 2½% Loan 1956–61	AO	90⅛xd	2 15 3	3 2 6
Victory 4% Loan Av. life 21 years	MS	109¾	3 12 11	3 6 10
Conversion 5% Loan 1944–64	MN	110½	4 10 6	1 16 1
Conversion 3½% Loan 1961 or after	AO	98⅛	3 11 1	—
Conversion 3% Loan 1948–53	MS	100¾	2 19 6	2 17 9
Conversion 2½% Loan 1944 49	AO	98⅛	2 10 9	2 13 9
National Defence Loan 3% 1954–58	JJ	100	3 0 0	3 0 0
Local Loans 3% Stock 1912 or after	JAJO	85½	3 10 2	—
Bank Stock	AO	340	3 10 7	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	82½	3 6 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	87	3 9 0	—
India 4½% 1950–55	MN	113	3 19 8	2 19 7
India 3½% 1931 or after	JAJO	96⅛	3 12 6	—
India 3% 1948 or after	JAJO	84	3 11 5	—
Sudan 4½% 1939–73 Av. life 27 years	FA	108	4 3 4	4 0 2
Sudan 4% 1974 Red. in part after 1950	MN	105	3 15 6	3 6 9
Tanganyika 4% Guaranteed 1951–71	FA	107	3 14 9	3 4 8
L.P.T.B. 4½% "T.F.A." Stock 1942–72	JJ	104	4 6 6	2 10 0
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	91½	2 14 8	3 3 9
COLONIAL SECURITIES				
*Australia (Commonw'th) 4% 1955–70	JJ	105½	3 15 10	3 10 5
Australia (Commonw'th) 3% 1955–58	AO	91½	3 5 7	3 12 6
*Canada 4% 1953–58	MS	107½	3 14 5	3 5 8
*Natal 3% 1929–49	JJ	99	3 0 7	3 2 8
*New South Wales 3½% 1930–50	JJ	98½	3 11 1	3 13 8
New Zealand 3% 1945	AO	96½	3 2 2	3 15 7
Nigeria 4% 1963	AO	107	3 14 9	3 11 2
Queensland 3½% 1950–70	JJ	97½	3 11 10	3 12 9
*South Africa 3½% 1953–73	JD	101	3 9 4	3 8 0
*Victoria 3½% 1929–49	AO	98½	3 11 1	3 13 7
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	84	3 11 5	—
Croydon 3% 1940–60	AO	93½	3 4 2	3 9 1
*Essex County 3½% 1952–72	JD	102	3 8 8	3 6 2
Leeds 3% 1927 or after	JJ	85	3 10 7	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	96	3 12 11	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71	3 10 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	84	3 11 5	—
*London County 3½% Consolidated Stock 1954–59	FA	103	3 8 0	3 4 7
Manchester 3% 1941 or after	FA	84	3 11 5	—
Metropolitan Consd. 2½% 1920–49	MJSD	97½	2 11 3	2 16 4
Metropolitan Water Board 3% "A" 1963–2003	AO	87	3 9 0	3 10 4
Do. do. 3% "B" 1934–2003	MS	88½	3 7 10	3 9 0
Do. do. 3% "E" 1953–73	JJ	92	3 5 3	3 8 2
*Middlesex County Council 4% 1952–72	MN	105	3 16 2	3 10 3
* Do. do. 4½% 1950–70	MN	108	4 3 4	3 12 2
Nottingham 3% Irredeemable	MN	84	3 11 5	—
Sheffield Corp. 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	103½	3 17 4	—
Gt. Western Rly. 4½% Debenture	JJ	111	4 1 1	—
Gt. Western Rly. 5% Debenture	JJ	122½	4 1 8	—
Gt. Western Rly. 5% Rent Charge	FA	116	4 6 2	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	114	4 7 9	—
Gt. Western Rly. 5% Preference	MA	101½	4 18 6	—
Southern Rly. 4% Debenture	JJ	101½	3 18 10	—
Southern Rly. 4% Red. Deb. 1962–67	JJ	104½	3 16 7	3 13 11
Southern Rly. 5% Guaranteed	MA	114	4 7 9	—
Southern Rly. 5% Preference	MA	101½	4 18 6	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.